United Nations S/2011/678

Security Council

Distr.: General
2 November 2011

Original: English

Report of the Secretary-General on South Sudan

I. Introduction

1. The present report is submitted pursuant to paragraph 19 of Security Council resolution 1996 (2011), dated 8 July 2011, in which the Council requested that, following consultations with the Government of South Sudan, benchmarks for the United Nations Mission in South Sudan (UNMISS) be presented to the Council within four months and that the Council be kept regularly informed of progress every four months thereafter. The report provides an assessment of the overall situation in the country and an update on the activities of UNMISS since its establishment on 9 July 2011.

II. Mission transition, start-up and planning

2. My Special Representative, Hilde Frafjord Johnson, and a small advance team arrived in South Sudan on 8 July 2011 to expedite the start-up of UNMISS on 9 July. By 31 July, more than 2,000 international and national civilian staff members, 203 United Nations military observers, 64 staff officers and 378 United Nations police had been formally transferred from the United Nations Mission in the Sudan (UNMIS) to UNMISS. While UNMISS benefited from the staff and resources affiliated with the former UNMIS, the Mission faced the challenges of starting up a new operation with new senior leadership and immediate needs in taking forward strategic and operational planning.

III. Political developments

3. On 9 July, with the expiration of the interim period under the Comprehensive Peace Agreement, South Sudan was formally declared an independent State. Thirty Heads of State, Ministers and dignitaries from around the world, including the President of the Sudan, Omer Al-Bashir, participated in the independence ceremony, held in Juba. The President of the General Assembly and I were both privileged to attend this historic event. During the ceremony, the President of South Sudan, Salva Kiir, took the oath of office, signed and promulgated the Transitional Constitution of South Sudan and declared a public amnesty for all militia groups. President Kiir also highlighted the core challenges that South Sudan will face in the areas of corruption, governance and political inclusiveness, noting that the current transitional period

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will be a critical test of how the Government will meet those challenges. Also, at the ceremony, President Al-Bashir reaffirmed his Government's recognition of South Sudan and pledged to work closely with President Kiir to resolve outstanding issues and build a strong partnership going forward.

Formation of the Government of South Sudan

4. Since 9 July, the South Sudanese political leadership has focused on forming a new Government and establishing new Government institutions. On 10 July, President Kiir issued a decree reappointing almost all incumbent Cabinet members as Caretaker Ministers. The Vice-President of the former Southern Sudan, Riek Machar, was subsequently sworn in as Vice-President of South Sudan, on 11 July. Until the new Cabinet was sworn in on 1 September, no significant policy decisions were issued and consultations with international partners, including UNMISS, could not take place.

5. On 26 August 2011, President Kiir issued decrees appointing a Government of 29 Ministers and 27 Deputy Ministers. Prior to this, President Kiir had issued decrees appointing a new Chief Justice of the Supreme Court and a new Governor of the central bank. With few exceptions, the major political stakeholders in the previous Government hold positions in the new Cabinet, although with several changes to their portfolios. While the Cabinet remains composed predominantly of members of the Sudan People's Liberation Movement (SPLM), five other political parties are also represented, reflecting broader regional and gender representation.

Legislative developments

6. On 1 August, President Kiir issued decrees appointing the 332-member National Legislative Assembly and a new entity, the 50-member Council of States. The Assembly comprises the members of the former Southern Sudan Legislative Assembly, together with 96 former members of the National Assembly of the Sudan elected from Southern constituencies and 66 new members appointed by the President, as stipulated in the Transitional Constitution. A total of 20 of the 66 new National Legislative Assembly seats and 5 Council of States seats were allocated to the opposition. These Assembly seats were distributed among five opposition political parties, with each party receiving four. Altogether, opposition parties hold approximately 10 per cent of the seats in the Assembly. Several opposition political parties objected to these appointments, arguing that they had been promised 20 per cent of the seats in the National Legislative Assembly at an April 2011 meeting of the Political Parties Leadership Forum.

7. On 8 August, President Kiir addressed the joint inaugural session of the National Legislative Assembly and the Council of States, and highlighted five priorities for the Government under the national development plan: education, health care, infrastructural development, the rule of law and the transformation of the Sudan People's Liberation Army (SPLA). He announced specific objectives for each, to be attained within 100 days of the formation of the new Cabinet. He also expressed his commitment to achieving critical legislation for transparency and accountability within 100 days.

8. The Ministry of Justice has prepared a draft political party act and a draft national electoral law. The Nationality Act, defining who is a citizen of South Sudan, has been adopted into law. With regard to these transitional political

milestones, UNMISS has provided good offices and engaged with the Government to advocate inclusive consultative processes with all stakeholders. Each draft has been presented to political parties for discussion before its submission to the Cabinet for a decision. Within one month after the enactment of the electoral law, an independent national elections commission is to be established. In accordance with the Transitional Constitution, the President is to establish a national constitutional review commission by 9 January 2012, with one year in which to conduct the review process before a national constitutional conference is convened.

Economic developments

9. In the immediate aftermath of the independence of South Sudan, both it and the Sudan issued a new currency. The Government of South Sudan introduced its new currency, the South Sudanese pound, on 18 July and stopped the circulation of the Sudanese pound on 1 September, which the parties to the Comprehensive Peace Agreement had planned to use for a transitional period of six months, extendable to nine months.

10. Between 18 July and 1 September, the Bank of South Sudan converted approximately 1.771 billion of the estimated 2.1 billion Sudanese pounds in circulation in South Sudan to South Sudanese pounds at a one-to-one rate of exchange. In addition, the Government of the Sudan issued new banknotes in early August and banned the import or use of the old Sudanese pound banknotes at the end of August. The Bank of South Sudan has announced its intention to peg the South Sudanese pound to the United States dollar by December. The areas of South Sudan bordering the North have been negatively affected by commodity shortages, contributing to inflation. The South Sudan Central Bureau of Statistics reported an inflation rate in South Sudan of 61.5 per cent.

Anti-corruption efforts

11. President Kiir has emphasized the importance of anti-corruption efforts in his national agenda, including in his Independence Day address, his 8 August opening address at the joint session of the National Legislative Assembly and the Council of States, and his 19 September statement at the sixty-sixth session of the General Assembly. His legislative programme to combat corruption is centred on five proposed acts related to public financial management and accountability, procurement, internal auditing, and petroleum and oil revenue management. He has also launched related initiatives: the investigation and prosecution of corruption cases and the publication of investigation results; the enforcement of the declaration of public officials' income and assets; the review of land sales during the transitional period; and the facilitation of the anonymous return of illegally diverted funds. He has welcomed assistance from Switzerland, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Australia in the recovery of illegally diverted funds.

Location of the national capital

12. The question of the location and possible expansion of the national capital has been a long-standing source of debate, with unresolved issues concerning the land rights of communities indigenous to Juba and the right of the federal Government to use land in the surrounding areas. A subcommittee was formed in February 2011 and

tasked with proposing several viable options for the location of the capital for consideration by the Cabinet. In September 2011, the Council of Ministers issued its first major policy decision, to relocate the national administrative capital from Juba, Central Equatoria State, to Ramciel, Lakes State.

13. Ramciel, located nearly 200 km from Juba, is geographically situated in the centre of South Sudan, which could be perceived as neutral and unifying insofar as it does not give preference to any of the three major regions of South Sudan. At present, Ramciel is largely undeveloped and inaccessible, without paved roads or infrastructure. The Council of Ministers established a committee, led by the Minister of Housing and Physical Planning, to devise modalities for the relocation process and to ensure that the necessary infrastructure is in place within five years. The Ministry has been given 45 days for the development of a road map on the proposed relocation, to be submitted, together with additional information on alternative proposals, to the Office of the President.

Bilateral relations between South Sudan and the Sudan

14. Continued lack of progress on outstanding Comprehensive Peace Agreement and post-independence negotiations, in particular on financial arrangements, Abyei and border demarcation, has contributed to a lack of progress in North-South relations and significant uncertainty in South Sudan since 9 July. North-South tensions have been particularly high in the light of the intensified conflicts in Southern Kordofan and Blue Nile States, with allegations by the Government of the Sudan that SPLM-North has received support from South Sudan. The Government of South Sudan has denied those allegations. Delays in the implementation of the 20 June agreement on Abyei have also contributed to tensions between the two countries.

15. A meeting between Presidents Al-Bashir and Kiir in Khartoum on 8 October resulted in positive public statements by both Presidents and a recommitment to working together to resolve these issues.

Foreign and diplomatic relations of the Government

16. The Government of South Sudan has joined or applied for membership in several international organizations. On 14 July 2011, it joined the United Nations as the 193rd Member; on 15 August it was officially admitted as the 54th member of the African Union. South Sudan has also applied for membership in the Nile Basin Initiative and has indicated its intention to join the Intergovernmental Authority on Development (IGAD). In addition, it has announced that it has applied for observer status in the East African Community, with the intention to join.

17. The Government of South Sudan is strengthening international trade links and foreign relations structures through diplomatic engagement in Juba and externally. In Juba, a number of resident ambassadors have presented their credentials to President Kiir, while 14 countries have formally established embassies in South Sudan. Meanwhile, the Ministry of Foreign Affairs and International Cooperation has indicated that it will open additional missions in a number of countries.

IV. Security developments

18. The reporting period witnessed important initiatives by the Government of South Sudan to neutralize internal security threats through the integration of militia groups into SPLA, alongside efforts aimed at political reconciliation. However, militia groups outside this process and intercommunal violence remain significant sources of insecurity, with large numbers of civilian casualties, especially in Jonglei State. While fighting in Southern Kordofan and Blue Nile States and lack of progress in Abyei have not led to violence in South Sudan, concerns remain that conflict could spill over the border with little warning.

Militia groups

19. Between July and August 2011, bilateral initiatives between the Government and three militia leaders resulted in the implementation of arrangements for their integration into SPLA. To date, approximately 1,000 persons from the militia formerly allied with Peter Gadet, 450 from the group led by the late Gatluak Gai and 207 allied with David Yau Yau have been relocated to SPLA barracks. In addition, an unknown number of Gabriel Tanginya's forces have been relocated to the Mapel area in preparation for their integration into SPLA. The Government has made significant progress with the efforts to integrate the militias, with only the Athor, Olonyi and Ogat militias remaining outside the integration process. UNMISS provided support to the Government for the integration of those militias, including screening, registration and the provision of transport.

20. Early in July, the Jonglei-based militia leader David Yau Yau accepted a Government of South Sudan offer of amnesty and began to integrate his forces. Those forces, 207 of whom were subsequently integrated into SPLA, were based outside Pibor town, in an area accessible only by helicopter. In an operation that concluded on 5 September, UNMISS provided logistical assistance to move the forces from Pibor to the SPLA base in Owiny Ki-Bul, Eastern Equatoria State. SPLA reported that the process of integrating this group was complete, although some remnants of Yau Yau's forces in Jonglei State may have turned to banditry.

21. The militia leader Gatluak Gai agreed to a ceasefire and integration plan with SPLA on 18 July 2011. While Gai himself was killed in an internal dispute five days later, his forces have largely continued to abide by the agreement. According to SPLA, approximately 450 of Gai's combatants, originally based in Koch County, Unity State, were moved and are currently stationed outside an SPLA facility in Mapel, Western Bahr al-Ghazal State. The number of the forces remaining outside this process is not known.

22. Early in August 2011, Peter Gadet agreed to a ceasefire and to the integration of his forces into SPLA. While some of his senior commanders refused to join the integration process, the majority of his forces, approximately 1,000 troops — some of them coming from Unity State, with others redeployed from Southern Kordofan State, first to Unity State and then to the SPLA facility in Mapel, Western Bahr al-Ghazal State — agreed to do so. Initial visual reports in Unity State indicated that there were a substantial number of children younger than 18 associated with Gadet's forces. Subsequently, late in October, the South Sudan Disarmament, Demobilization and Reintegration Commission, the United Nations Children's Fund (UNICEF) and UNMISS were able to remove 44 children for reunion with their

families. Nevertheless, full screening has not yet been possible and is expected to be carried out shortly.

23. The militia leader George Athor remains active and continues to be a significant destabilizing presence in Jonglei State. Recent reports indicate that Athor may have several hundred militiamen operating in the western portion of the State. On 27 September, Athor's forces reportedly looted food supplies stored in a World Food Programme warehouse in Jiech, Jonglei State.

24. Militia leaders Johnson Olonyi and Ayok Ogat remain active along the eastern border of Upper Nile State. Fighting in Manyo County from 18 to 20 August reportedly left 35 SPLA troops and 63 of Olonyi's troops dead. Since then, SPLA has reinforced its positions and the area has been relatively calm.

Intercommunal conflict

25. Serious intercommunal conflict continued in Jonglei State through the reporting period, with a significant impact on the civilian populations. On 18 August 2011, Murle fighters attacked a number of Lou Nuer towns in Jonglei State, including Pieri, Yuai, Motot and Pulchoul, in response to large-scale Lou Nuer attacks on Murle towns in April and June 2011 that left hundreds dead. UNMISS has been unable to confirm the precise number of casualties, but local reports have estimated that as many as 600 were killed and 700 wounded. These attacks have been beyond the scale and scope of the violence typically associated with traditional cattle raiding and, with ongoing reports of mobilization within the Lou Nuer communities, the possibility of future attacks remains a serious concern.

26. Following the attacks, President Kiir directed SPLA to conduct preventive deployments in Jonglei State, which UNMISS has encouraged. The Mission conducted daily air patrols and deployed a company-size deterrent military presence to the area. The Mission also intensified air reconnaissance operations and sent integrated assessment missions following the violence. The South Sudan Council of Churches, with direct support from UNMISS and local and national political leaders, took the lead in engaging directly with the communities through a series of visits aimed at de-escalation and, eventually, a reconciliation conference. A comprehensive reconciliation process between the two communities is now under way. This includes efforts for the future exchange of abducted children, supported by UNICEF and the United Nations Development Programme (UNDP). UNMISS also responded to the violence by facilitating these reconciliation efforts and expanding its presence and operations in Jonglei State.

27. On 10 September, cattle raids on the recently disarmed Nuer community in Mayendit County, Unity State, reportedly left 46 dead, 13 injured and 45 missing. Witnesses reported that, unlike in traditional raids, the attackers tried to maximize the number of casualties inflicted, including by targeting women and children. The local Nuer community claimed that the attackers were Dinka youth from Warrap State, an accusation that the Dinka leadership has denied.

Civilian disarmament

28. The Government of South Sudan launched civilian disarmament operations in Lakes, Unity and Warrap States early in August and is scheduled to extend them to Jonglei State in mid-October. Spearheaded by the Governor of each State, the

approach involves community-led, voluntary disarmament, with SPLA-led forcible disarmament to follow as needed. It was reported that, as at 7 October, a total of 3,200 weapons had been voluntarily handed over in Lakes State; in Warrap State, 2,500 weapons had been handed over. The voluntary phase of the campaign has proceeded without incident.

29. The current campaign appears to be moving more smoothly than previous campaigns, owing in part to greater engagement with traditional chiefs and communities. While less violent than forcible disarmament, previous campaigns lacked safeguards for the disarmed communities, as well as steps to prevent the recirculation of arms. UNMISS has been monitoring this process and has increased its military patrols in Rumich and Yirol, Lakes State, and Akop, Warrap State, where only one community near an intercommunal border has been disarmed. The Mission also assisted the South Sudan Bureau for Community Security and Small Arms Control in developing systems and infrastructure for the registration and safe storage of weapons.

Lord's Resistance Army

30. Four attacks by the Lord's Resistance Army (LRA) were reported in August in Raja County, Western Bahr al-Ghazal State, but could not be confirmed. Some unverified reports also suggested the movement of LRA in the direction of Darfur. Also in Raja County, three attacks were reported in September, including the looting of a police station in Deim Jallabi and two separate clashes with the Uganda People's Defence Forces. While the presence of LRA is not militarily significant, the effect of the raids on civilians has far-reaching implications for the livelihoods of affected communities. For this reason, under the UNMISS military concept of operations, planned deployments to LRA-affected areas have been doubled compared with the previous deployment of UNMIS.

Military deployment of the Mission

31. As at 22 September 2011, the strength of the UNMISS military component stood at 5,329, out of the 7,000 troops authorized. The force generation process is ongoing, and to date a total of 27 countries have been approached to encourage them to provide contingents for UNMISS. Existing forces have been deployed primarily in operations in response to the crisis in Jonglei State, but activities have also included a deployment to Pibor in support of the integration of Yau Yau's forces, the monitoring of Gadet's forces through their redeployment to Mapel, and deterrence operations in Western Equatoria and Upper Nile States.

32. Security developments since the inception of UNMISS have required that the military achieve and sustain over a protracted period a considerably swifter operational tempo than that seen in UNMIS, placing a significant strain on the force. The upcoming dry season is expected to impose even greater operational requirements as pastoralist migrations begin and dry weather conditions allow for the greater mobility of militia group forces, cattle raiders and other sources of insecurity.

Mission freedom of movement

33. On 8 August 2011, as requested by the Security Council in resolution 1996 (2011), UNMISS and the Government of South Sudan signed a status-of-forces agreement guaranteeing the Mission's freedom of movement throughout the

territory of South Sudan. Under the terms of the agreement, UNMISS has clearance throughout South Sudan and is not required to request additional security clearance from SPLA or Government actors. Out of courtesy, UNMISS has shared the monthly military patrol programme with SPLA and has notified SPLA of its operations. Since 9 July, UNMISS has reported six denials of the freedom of movement of personnel and assets, four of them by members of SPLA. The Mission will continue to work with all actors to ensure that restrictions on freedom of movement are resolved immediately and do not inhibit the implementation of its mandate.

Mission police

34. UNMISS has deployed 375 of the 900 authorized police advisers, and United Nations police are currently stationed in every State capital and in 22 counties. Police operations have focused on building the capacity of the South Sudan Police Service through training, co-location at the State and local levels, and policy advice. In conjunction with the Service, a memorandum of understanding between the Government and the Mission has been prepared that clearly defines areas of cooperation and mutual obligations, which will facilitate the deployment of advisers and strengthen training initiatives.

35. The police registration database jointly developed by the United Nations police, UNDP and the South Sudan Police Service now has more than 36,000 entries of personnel details regarding both police officers and prison officers from all States. It will enable the police to register, screen and manage their human resources.

Disarmament, demobilization and reintegration and security sector reform

36. The disarmament, demobilization and reintegration programme of UNMIS, which was established in accordance with the Comprehensive Peace Agreement, will be completed by the South Sudan Disarmament, Demobilization and Reintegration Commission, in cooperation with UNDP and other United Nations country team members, on 31 December 2011. A total of 12,525 South Sudanese combatants will have been demobilized and reintegrated under this process.

37. Disarmament, demobilization and reintegration is a core aspect of the UNMISS mandate, particularly in relation to the transformation of SPLA and the police and security institutions and the related need for progress in the areas of peace, security and human rights. The South Sudan disarmament, demobilization and reintegration policy has been prepared by the South Sudan Disarmament, Demobilization and Reintegration Commission, in close cooperation with UNMISS and UNDP. In line with South Sudanese plans for the restructuring of the security forces, the policy calls for the disarmament, demobilization and reintegration of 80,000 SPLA elements and 70,000 members of the South Sudan Police Service, Wildlife Service, Prison Service and Fire Brigade.

38. Since independence, there has been a strong public commitment on the part of the Government to the implementation of its disarmament, demobilization and reintegration programme. The process of disassociating ex-combatants from the security forces is expected to last one year, including a three-month reinsertion phase during which ex-combatants will be relocated to UNMISS-supported transitional facilities to receive orientation before returning to their resident States. Reintegration options will then be facilitated by the line ministries and supported by the United Nations.

39. The South Sudan national disarmament, demobilization and reintegration strategy for 2012-2017 is currently being finalized and foresees disarmament, demobilization and reintegration operations starting in April 2012, with an initial pilot caseload of 4,500 combatants from the South Sudan Armed Forces and other organized forces to be processed at three transitional centres. As of August 2011, UNMISS, UNDP and the South Sudan Disarmament, Demobilization and Reintegration Commission were in the process of co-locating their functions at Juba and at the State level to carry out a fully integrated approach to the implementation of the disarmament, demobilization and reintegration programme.

40. The Minister for National Security officially requested the support of UNMISS for the development of a national security strategy, a comprehensive review of the security sector, the structuring of the Ministry for National Security and the management of the National Security Council and its executive secretariat. UNMISS is seeking to deploy appropriate expertise in order to respond quickly to this request. On 22 September, the Mission provided the SPLA Head of Military Justice with 45,800 rules-of-engagement cards, to be distributed among SPLA commanders and troops.

Mine action

41. During the reporting period, the Mine Action Service within UNMISS cleared a total of 293,411 square metres of land in 12 communities; destroyed 10 anti-personnel mines, 12 anti-tank mines, 590 items of small arms ammunition and 2,465 items of unexploded ordnance; and opened 121 km of road. In July 2011, the United Nations Mine Action Coordination Centre in South Sudan responded to reports of re-mining by militia groups in Unity, Upper Nile and Jonglei States, through the deployment of a route survey and clearance team to Unity State that is now addressing threats on the Bentiu-Leer-Adok route. Additional assets will be deployed to those areas over the next few months.

42. The Coordination Centre also provided mine risk education to 6,304 individuals, including internally displaced persons, refugees and residents living in communities contaminated with landmines or explosive ordnance, and delivered landmine safety training to 28 UNMISS international personnel.

43. National mine action counterparts, including the South Sudan Demining Authority and the Ministry of Gender, Child and Social Welfare, continued to benefit from capacity development through participation in on-the-job training opportunities. Furthermore, the Government declared its intention to accede to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, thereby maintaining its obligations under the Convention, although it is expected to negotiate a new deadline for meeting those obligations.

V. Protection of civilians

44. The reporting period witnessed significant threats to the civilian population in some parts of South Sudan, particularly Jonglei State. The ongoing process for the integration of militia groups and tensions related to civilian disarmament campaigns continued to place civilian communities at risk. As described above in the present report, intercommunal violence in Jonglei State posed significant threats for

civilians, including women and children. In addition, armed conflict in Southern Kordofan and Blue Nile States in June and July, respectively, led to refugee flows from those areas. LRA also remained a protection threat, with two reported incidents during September 2011 in Western Bahr al-Ghazal State, along the Central African Republic border.

45. In response, and taking into account the Government's primary role in protecting civilians, UNMISS mobilized a multifaceted protection response that included monitoring and early-warning civilian assessments, air patrols and long-range ground patrols, mediation and peace initiatives and support for the deployment of State law enforcement institutions to affected areas. The Mission also responded to escalating tensions in Jonglei through prevention and political processes, including consultations with Government authorities and community leaders to deter violence. The United Nations country team provided support for these reconciliation processes as well as humanitarian assistance.

46. The Mission has taken significant steps to incorporate the protection of civilians into its efforts at both the strategic and operational levels. An operational coordination group, chaired by the Joint Operations Centre, meets daily to coordinate responses to civilian protection concerns. The UNMISS civilian protection operations in Jonglei State are evidence of this coordinated approach. Furthermore, an integrated working group on the protection of civilians meets regularly to discuss protection trends and is developing a civilian protection strategy that will be reflected in my next report to the Council.

47. The South Sudan protection cluster has remained operational throughout the Mission's transition and has expanded its presence in all 10 States, with a focus on pre-empting or mitigating the impact of conflict-related violence on civilian populations. More than 40 rapid civilian protection needs assessments and concerted responses have been conducted in hotspot areas across South Sudan. Interventions have included preventive advocacy, the evacuation of populations caught in conflicts from Southern Kordofan State and Abyei to South Sudan, the reunification of separated families, the establishment of gender-based violence referral mechanisms, individual support for the most vulnerable members of displaced populations, and the deployment of psychosocial counsellors.

Child protection

48. During the reporting period, there was considerable success in gaining access to militia group forces, including for the registration and release of 49 children from David Yau Yau's militia forces. Efforts are under way to register children linked to forces associated with Peter Gadet and the late Gatluak Gai. In addition, UNMISS has engaged with SPLA on the United Nations/SPLA plan of action for the release of all children associated with armed forces, with positive results. A South Sudan country-level task force on Monitoring and reporting on grave violations of children's rights (in accordance with Security Council resolutions 1612 (2005) and 1882 (2009)) is being established. UNMISS has also developed a new child protection training programme for SPLA judge advocates, from which 34 trainees have already graduated.

Sexual violence

49. The analysis of data gathered from the work of UNMIS during the previous year indicates that sporadic sexual violence in armed conflict has occurred in South Sudan and that if conflict increases, it will likely occur again. Documented perpetrators have included SPLA and militia groups (particularly soldiers in the forces of Peter Gadet), although the number of confirmed cases is very small. The United Nations country team and the gender-based violence sub-cluster of the South Sudan protection cluster have established referral and support mechanisms for survivors of sexual violence (whether conflict-related or not), as well as sensitization programmes for SPLA.

VI. Humanitarian situation, recovery, development and return

Humanitarian developments

50. As a consequence of the security environment and food insecurity, humanitarian conditions have deteriorated in the post-independence period. According to local authorities and assessment teams, between 9 July and 30 September 2011 more than 37,600 people were displaced as a result of insecurity, bringing to more than 325,000 the total number of people who have fled their homes during the year. In addition, thousands of people were affected by flash flooding in the Agok area between Unity State and Abyei in the first week of September.

51. In Jonglei, Warrap, Upper Nile, Unity and Western Bahr al-Ghazal States, food security has deteriorated to crisis levels, owing to the combined impacts of conflict, erratic rainfall and the high food and fuel prices caused by North-South border closures. Projections for 2012 following a rapid crop assessment conducted in August indicate that in 2012, the cereal deficit could reach more than 400,000 metric tons, double the estimated 2011 deficit. Health and nutrition partners report that the food security situation has already driven a rise in malnutrition rates. Results from pre-harvest surveys conducted in 17 counties revealed that 11 counties in five States have extremely high levels of global and acute malnutrition.

52. Humanitarian partners have continued to increase their efforts to respond to this situation. By September 2011, more than 70 humanitarian operations were under way, including a comprehensive relief operation in Warrap State targeting the persons displaced from Abyei in the wake of the May 2011 conflict, as well as operations following recent attacks in Jonglei and responses to the continued influx of refugees from Southern Kordofan and Blue Nile States to Unity and Upper Nile States. In addition, relief organizations have provided returnees in transit with short-term emergency assistance, together with reinsertion packages at their final destinations, in line with principles outlined in the Government's procedures on return and reintegration issued in December 2010.

53. Improving humanitarian access remains a top priority. Since 9 July 2011, humanitarian organizations in South Sudan have recorded 27 incidents in which SPLA or other State actors interfered with relief operations, looted supplies, harassed personnel or otherwise restricted the ability of humanitarian workers to reach communities. The Government has strongly condemned these incidents and has committed to working with partners to curb interference.

Recovery and development

54. Following independence, the Government launched its South Sudan Development Plan, prepared with support from the United Nations country team and other development partners. The Plan covers the period from 9 July 2011 to 2013 and serves as an interim poverty reduction strategy paper. It identifies key development objectives for the new country in four priority areas: (a) governance, (b) economic development, (c) social and human development, and (d) conflict prevention and security. The Plan will be used to determine budget allocations and will guide the funding decisions of the development partners. It also includes a medium-term capacity development strategy, prepared with technical support from UNDP, which is aimed at ensuring that the Government can effectively address the current capacity gaps in South Sudan.

55. Within the framework of the medium-term capacity development strategy, a number of capacity surge initiatives are already under way. Under the IGAD Regional Initiative for Capacity Enhancement, 45 civil servants have been deployed from Kenya to work in national and State structures, and another 155 are due to be deployed following the signature of the memorandum of understanding among South Sudan, Kenya, Uganda and Ethiopia on 3 October 2011. Discussions are under way to scale up the Initiative through the African Union. These initiatives are in addition to the more than 100 United Nations Volunteers already deployed in State institutions, including all 10 Governors' offices, to assist in the establishment of functional State institutions.

56. Stabilization programmes, funded through the Sudan Recovery Fund-South Sudan in a partnership between State Governments and the United Nations, amount to $85 million and are now being implemented in four of the most insecure, conflict-prone States of South Sudan. These programmes are based on priorities identified by the State Security Committee and are focused on the extension of State authority into high-risk areas, including through secure access roads, police and judicial infrastructure, and water points and boreholes where water is a source of conflict. In total, 54 new police stations and posts are being completed by the Sudan Recovery Fund-South Sudan and other United Nations-supported programmes, which will boost law enforcement coverage across the 10 States.

Return and reintegration

57. More than 342,000 South Sudanese have returned from the Sudan since October 2010, with the largest number of returnees concentrating in the border States of Unity, Northern Bahr al-Ghazal and Upper Nile. The pace of new arrivals has increased since July 2011, with an estimated 500 people per day entering South Sudan.

58. Upper Nile State remains the only fully open transit corridor for new arrivals, leading to population build-up in transit sites in Renk. Partners have in-transit and stranded groups with short-term emergency assistance in Renk and other areas, and a reinsertion package at their final destinations. Furthermore, the United Nations has continued to assist the Government of South Sudan in furnishing transportation from transit sites to final destination areas for 4,329 returnees, including through the creation of way stations along return routes providing water, sanitation, hygienic facilities, cooked food and protection. In addition, IOM assisted the South Sudan Relief and Rehabilitation Commission in setting up a tracking and monitoring

network to provide data on returnees and facilitate their reintegration. As a result, from 9 July until 4 October, 36,148 South Sudanese were tracked to their final destinations in South Sudan. At the national level, a return task force, chaired by the Government, coordinates the work of the line ministries in Juba, and return committees operate in each of the 10 States of South Sudan, under the leadership of the Commission. However, challenges remain, including the low availability of barges for onward transport, the need for stronger joint planning between both Governments and humanitarian partners, and the slow pace of the allocation of land to returnee communities.

59. According to the Ministry of Labour, Public Service and Human Resource Development, a total of 4,300 South Sudanese personnel from the Police Service, the Prisons Service and the Fire Brigade have returned to the South and are being screened. It appears that most of them will likely be absorbed into the uniformed forces of South Sudan. Likewise, according to the Ministry, a process is currently under way for the absorption of 17,000 civil servants returning to South Sudan.

VII. Rule of law and human rights

Rule of law

60. As a legacy of the civil war, South Sudan faces enormous challenges in the area of rule of law, including a lack of capacity in the judicial and prisons institutions, a limited Government presence outside the State capitals and a critical shortage of well-trained civil servants. Assisting the Government in building effective, well-accepted rule-of-law and security institutions is a major priority for UNMISS.

61. The 12 July rapid deployment of the new, Brindisi-based Justice and Corrections Standing Capacity supported UNMISS in engaging quickly with the Government on its mandate in justice- and security-related tasks. In August, the Mission provided the Government with an analysis of the newly established Ministry of Justice's three-year strategic framework and its legal aid strategy. In addition, the Ministry has issued an ambitious 100-day action plan, on the basis of which it will seek donor support. Mission consultations with the Government are ongoing with regard to possible arrangements for the provision of support in mandated areas by technical experts on judicial and security sector reform.

62. A pilot mapping of arbitrary and prolonged detention in South Sudan, focusing on Wau and Kuajok, was undertaken from 31 August to 10 September by a joint team of UNMISS judicial affairs officers and corrections advisers. This exercise will help to establish a methodology for future mapping with a view to informing the effort, planned by national authorities, to send mobile teams of judges and prosecutors to address arbitrary detention in those States where the caseload is highest.

63. During the reporting period, UNMISS provided technical advice for the renovation work nearing completion at the Bor, Juba, Malakal, Rumbek, Yambio and Wau prisons, and for the new prisons being constructed in Bentiu and Kuajok. UNMISS participation in the new Juba Remand Review Board contributed to the removal of juvenile remand prisoners and the identification of arbitrarily detained juveniles.

Human rights

64. The human rights challenges in South Sudan are enormous, while the institutional capacity of the Government to manage human rights issues is very limited. The strong human rights mandate of UNMISS includes monitoring, investigating and reporting on human rights issues, while also working to build the Government's capacity to address human rights concerns in an effective manner in conformity with international standards.

65. Since 9 July 2011, there have been 313 alleged cases of the mistreatment or prolonged illegal or arbitrary detention of individuals in South Sudan, including United Nations personnel (as discussed below). The Mission is working to document those reports. UNMISS also reported on 13 incidents in Juba, Malakal, Bentiu, Aweil and Kuajok concerning the restriction of access and freedom of movement by Government actors, including lengthy curfews, temporary detentions at checkpoints and illegal searches and seizures of goods belonging to civilians.

66. Immediately following the 20 August attack of the Murle on the Lou Nuer in Uror County, Jonglei State, the UNMISS Human Rights Unit participated in a rapid-response, fact-finding investigation operation throughout August and September.

67. During the reporting period, UNMISS participated in advocacy efforts in Lakes State that led to the signing of a standard operating procedure for response to and the prevention of gender-based violence by Government line ministries, justice sector departments, community leaders, United Nations agencies, and international and civil society organizations. UNMISS also provided support for the Government's ratification process relating to key international human rights treaties, and has engaged in monitoring and reporting on the harmonization of the national legislative framework with international human rights standards.

VIII. Cross-cutting issues in the Mission

Implementation of the review of civilian capacity in the aftermath of conflict

68. Within the framework of the review of civilian capacity in the aftermath of conflict, UNMISS has made progress on three fronts: (a) facilitating national ownership through the promotion of local procurement; (b) promoting civilian partnerships by allowing for the deployment of Member States' civilian capacities; and (c) leveraging synergies within the United Nations system to fill capacity gaps.

69. UNMISS has examined the scope for local procurement within South Sudan and has identified already developed local service providers upon which the Mission can draw. The Mission has also initiated discussions with the Department of Management on promoting local procurement by making the vendor registration committee more flexible so as not to exclude local suppliers.

70. Since March 2011, a pilot project providing UNMISS with capacity has been implemented. The Mission has received support from the German Federal Agency for Technical Relief, which has deployed engineers to manage the construction of living accommodations for United Nations staff members. The project will eventually include the implementation of a training component, whereby personnel of the Agency will carry out the project through the mentoring of South Sudanese ex-combatants.

Public information

71. During the reporting period, the cornerstone of the Public Information Section of UNMISS remained support for the Juba-based Radio Miraya, which contributed to media coverage of some of the major challenges facing a post-independent South Sudan, including the fight against corruption, the reduction of police violence and illegal taxation. UNMISS also facilitated numerous press briefings and trips to Jonglei and Western Equatoria States for national and international journalists in order to improve their understanding of the situation in flashpoint States.

Conduct and discipline

72. UNMISS convened a three-day retreat in July 2011 to draw lessons learned from UNMIS in the area of conduct and discipline, while seeking a resolution of and speeding up the review or investigation of a number of outstanding cases. The Mission initiated partnership-building activities to raise awareness among United Nations personnel and the local population with regard to United Nations standards of conduct, including the reactivation of the South Sudan task force on the prevention of sexual exploitation and abuse, comprising representatives of UNMISS, the United Nations country team and the Government.

Gender

73. In order to support, in a coherent and coordinated manner, women's full participation in decision-making, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and UNMISS are working, in line with my report on women's participation in peacebuilding (A/65/354-S/2010/466), to develop a common framework for action on women's empowerment and gender equality. At the national level, UN-Women has provided the Ministry of Gender, Child and Social Welfare with technical assistance, while UNMISS has provided technical and substantive support to the Ministry for the launching of the "Sixteen days of activism" to combat violence against women. At the State level, particularly in Jonglei, UNMISS has engaged with key actors to develop a joint workplan highlighting gender priorities. In addition, UN-Women and the World Bank, in collaboration with UNMISS, has supported the preparation by women's civil society organizations of a paper on priority gender issues in South Sudan, to be presented at upcoming international conferences in support of the South Sudan Development Plan.

HIV/AIDS

74. UNMISS conducted HIV/AIDS awareness activities through the training of 30 HIV/AIDS counsellors in Juba within SPLA, the South Sudan Police Service, the Prisons Service and the Wildlife Service. At the State level, the HIV/AIDS Unit saw the graduation of 32 HIV/AIDS change agents in Lakes State. In Western Bahr al-Ghazal State, 52 teachers received HIV/AIDS awareness training, while, in Jonglei, UNMISS supported the non-governmental organization the Community Development and Rehabilitation Society in organizing a sensitization programme for 3,000 community members. The Mission promoted HIV/AIDS awareness among 1,508 peacekeepers in nine States. In addition, 62 peacekeepers received HIV/AIDS counselling services.

Staff security

75. In August, UNMISS registered four incidents of South Sudan Police Service violations against United Nations staff members, involving wrongful arrest, mistreatment and detention, including the assault and arbitrary detention of the UNMISS Chief Human Rights Officer on 20 August by the Service in Juba. A Government inquiry into the latter incident led to an official apology, the suspension of the perpetrators and the adoption of additional corrective measures. On 16 and 20 September, a helicopter and its crew were detained and eventually released by SPLA troops, without harm. On 24 October, a member of the Service shot an UNMISS helicopter while it was landing in Namutina (200 km north-west of Yambio, Western Equatoria State). The helicopter was struck twice in the cockpit, without injury to the crew, and was able to return to its point of departure. UNMISS senior leadership immediately met with the Government of South Sudan Ministries of Cabinet Affairs and Foreign Affairs to express serious concern at the violation of the status-of-forces agreement and the risk posed to United Nations staff. The Government expressed regret at the incident, stating that it had been the result of miscommunication with State authorities, and committed to a full investigation of the matter. UNMISS has vigorously followed up on all of these incidents, including through the exercise of good offices at the highest level.

Financial aspects

76. The General Assembly, by its resolution 65/257 B, authorized the utilization of resources approved for UNMIS in entering into commitments for the period from 1 July to 31 December 2011 for UNMISS. A budget proposal for UNMISS for the period 2011/12 will be presented to the Assembly during the main part of its sixty-sixth session. The reimbursement of troop-contributing countries for troops has been made for the period until 31 August 2011, as well as the first instalment of the supplemental payment for troop-contributing countries, approved by the Assembly by its resolution 65/289.

IX. Observations and recommendations

77. The transition of South Sudan from decades of war to sustainable peace presents huge challenges. High expectations within and outside South Sudan regarding the transition to a stable, democratically governed country will not be met in the short term. It is therefore absolutely critical that the Government of South Sudan and its international partners set realistic priorities for addressing the country's immediate needs, while putting in place the longer-term processes that will allow the Southern Sudanese to benefit from stability, economic growth and development.

78. A key priority is the development of governance institutions based on the principles of political inclusiveness and transparency. I am encouraged by the first steps taken by the Government, including the formation of a more representative Cabinet and the commitment of the President to combat corruption. As the Government takes forward its electoral law and permanent constitutional processes, it must ensure that the views of all stakeholders and communities in South Sudan are meaningfully taken into account. The strength of governance institutions in South Sudan will be built on broad representation, accountability and transparency.

79. The security situation in South Sudan remains of deep concern, particularly in Jonglei and Upper Nile States, where conflict has had significant humanitarian consequences. The Government of South Sudan has primary responsibility for protecting civilians and addressing insecurity. Steps taken by SPLA to deploy to affected areas are a positive measure, as are efforts by traditional and church leaders to foster intercommunal reconciliation. However, it is also critical that the Government plan for the longer-term stability of these areas, take steps to address the root causes of conflicts, promote the equitable allocation of resources, and provide adequate personnel and resources to extend its authority to the most remote and conflict-affected areas of the country.

80. UNMISS has a supporting role with respect to both the immediate protection concerns and the efforts to build political, administrative and rule-of-law capacities, especially in conflict-prone areas. In this regard, the Mission has initiated and sustained prevention and deterrence operations in Jonglei State and has provided direct support for the reconciliation efforts of traditional and Government leaders. These efforts will increase as the Mission finalizes its deployment and expands its own presence in South Sudan.

81. Given the high levels of insecurity in many areas in South Sudan and the nascent capacities of the Government to extend State authority to remote areas, I would reiterate the recommendation, set out in my 17 May 2011 report on the Sudan (S/2011/314), that the Mission's troop strength be maintained at 7,000 for the time being.

82. The serious violations of human rights committed by the South Sudan Police Service and SPLA during the reporting period demonstrate the urgent need to transform and professionalize security and rule-of-law institutions, including through improvements to command and control structures. Steps taken by the Government towards the ratification of key human rights instruments are a positive sign that should now be followed by concrete actions to implement international human rights standards. UNMISS is committed to assisting the Government in this regard, including by monitoring, investigating and reporting on allegations of human rights violations.

83. Like UNMISS, the Government of South Sudan is in its start-up phase, having been appointed only in recent months. Consultations have therefore only just begun between the Mission and the Government regarding peacebuilding priorities and benchmarks for measuring progress towards the achievement of jointly agreed goals. It will likely require several more months of wide-ranging consultations with the Government to develop the peacebuilding plan and benchmarks requested by the Security Council in resolution 1996 (2011). I will provide an update on progress made in this regard in my next report to the Council.

84. While most of the threats posed to security and stability in South Sudan are internal, the lack of stabilization of its relations with the Sudan weighs heavily on the new Government, particularly amid the intensifying conflict in the border regions. The threat from the Sudan, whether perceived or real, will impinge upon the prioritization, spending and decision-making of the new Government of South Sudan, with potentially adverse implications for key priorities and delivery to its citizens, until these conflicts have been resolved. I call on both Governments to demonstrate the commitment and flexibility to agree on key post-independence issues and move towards a strong, mutually beneficial partnership going forward.

85. I would like to conclude by expressing my appreciation for the dedicated service of my Special Representative for South Sudan, Hilde Frafjord Johnson, as well as for all military, police and civilian personnel serving in UNMISS. In addition, I would like to thank the entire United Nations country team and its partners in South Sudan.

United Nations S/2011/679

Security Council

Distr.: General
3 November 2011

Original: English

Identical letters dated 2 November 2011 from the Permanent Representative of Israel to the United Nations addressed to the Secretary-General and the President of the Security Council

As I write this letter, some 27 people are travelling on two boats in the direction of the Gaza Strip, with the stated intention of violating Israel's naval blockade of the area. Reports indicate that these boats set sail from a port in Turkey and will arrive in the vicinity of the Gaza Strip by Thursday evening or Friday morning.

This attempt to challenge Israel's naval blockade of Gaza holds the potential for dangerous consequences. Launched under the false pretext of providing humanitarian assistance, it is a provocation clearly designed only to serve an extremist political agenda.

As the United Nations Palmer report stated clearly, "The naval blockade was imposed as a legitimate security measure in order to prevent weapons from entering Gaza by sea and its implementation complied with the requirements of international law".

Over the past week — as Grad rockets and long-range missiles have fallen on Israeli cities, schools and civilians — the clear need for this blockade has been demonstrated once again. My Government has a fundamental duty to protect its citizens — and prevent weapons from reaching the hands of terrorists in Gaza. Therefore, Israel is entitled to and will take all necessary measures to prevent violations of its naval blockade.

There is no need for this flotilla. As is widely known, there are established mechanisms by which humanitarian assistance can be delivered to the Gaza Strip, including through Israel. The only goods that Israel prevents from entering Gaza are arms, weapons and material with dual-use applications — in other words, material that is used to produce bombs or other weapons.

Many international leaders — including heads of State, United Nations representatives and a majority of Security Council members — have spoken out clearly against these kinds of flotillas to Gaza over the past year, emphasizing the need for humanitarian supplies to be transferred to the area only through established channels.

In a statement on 27 May 2011, Secretary-General Ban Ki-moon expressed his belief that "assistance and goods destined to Gaza should be channelled through

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legitimate crossings and established channels", making clear that these flotillas "carry the potential to escalate into violent conflict".

As these boats continue on their course towards Gaza, the need for your unequivocal condemnation of this provocation is as clear as ever.

As the Palmer report makes clear, "States have a duty to take active steps to warn their citizens of the risks involved in running a blockade ...".

These kinds of actions are particularly troubling in the light of the present turmoil in the Middle East. The international community must send an unambiguous message to the organizers and participants of these provocations that such initiatives only serve to raise tensions in our region, stressing that the appropriate means for transferring humanitarian goods to Gaza is through established channels. Let me stress that Israel is not interested in confrontation, but is firmly determined to enforce the naval blockade of the Gaza Strip.

I should be grateful if you would have the present letter distributed as a document of the Security Council.

(*Signed*) Ron **Prosor**
Ambassador
Permanent Representative

United Nations A/ES-10/538–S/2011/680

General Assembly
Security Council

Distr.: General
3 November 2011

Original: English

General Assembly
Tenth emergency special session
Agenda item 5
Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory

Security Council
Sixty-sixth year

Identical letters dated 2 November 2011 from the Permanent Observer of Palestine to the United Nations addressed to the Secretary-General and the President of the Security Council

I regret to inform you of the intensification of the illegal Israeli settlement campaign in the Occupied Palestinian Territory, including East Jerusalem, which has been reaffirmed by recent provocative declarations by Israeli officials, including the Prime Minister. In this regard, it is shockingly clear that the recent decision announced by the Israeli Government of its intention to accelerate settlement activities, including the construction of at least 2,000 new settlement units in Occupied East Jerusalem, is a retaliatory measure being undertaken by the occupying Power to collectively punish the Palestinian people and their leadership following the admittance of Palestine as a Member State to the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 31 October 2011.

There can be no question that Israel, the occupying Power, is deliberately pursuing this illegal colonization campaign to alter the demographic composition, character and status of the Occupied Palestinian Territory, and particularly Occupied East Jerusalem, in order to entrench the occupying Power's presence and its control of the lands it has occupied since June 1967 in order to facilitate its unlawful de facto annexation and prejudge the outcome of negotiations between the two sides. Now, it is also clear that the occupying Power is using this illegal practice as an aggressive punitive measure in what can be viewed as the Israeli Government's official version of the repugnant "price tag" policy so viciously used by the illegal Israeli settlers against the Palestinian people and their property. The result: in tandem, the Israeli Government and its settlers are not only destroying the contiguity and integrity of the Occupied Palestinian Territory, but accelerating the destruction of the peace process and of the two-State solution based on the pre-1967 borders.

This unlawful and destructive Israeli settlement campaign must be stopped if we are to salvage the prospects for achieving the Security Council's vision of two States of Israel and Palestine living side by side within secure and recognized

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borders on the basis of the pre-1967 borders. Israel's absolute and deliberate contempt for international law, relevant United Nations resolutions, the Quartet road map and the firm position of the international community on this matter must not go without consequence. Only determined and clear action by the international community, including the Security Council, can send the necessary message to the occupying Power of the global rejection of this illegal campaign and the demand for it to stop immediately and completely.

The Palestinian leadership thus calls on the Security Council to uphold its responsibilities under the Charter, to uphold its resolutions on this critical issue and to act forthwith to hold Israel, the occupying Power, accountable for its illegal actions. Israel's illegal activities and incessant aggression, violation and provocations against the Palestinian people and their leadership are raising tensions and destabilizing the situation on the ground, clearly threatening peace and security in our region, with undeniable consequences for international peace and security. It is thus the duty of the Council to urgently and appropriately address this issue.

Israel's defiance of the law and of the international community cannot continue to go unaddressed. It is the failure to hold Israel accountable for this defiance that has allowed it to persist with the impunity that has deepened the conflict and undermined all efforts to resume the peace process, including the recent efforts by the Quartet members in this regard. Moreover, it has ensured that Palestine's cooperation with the efforts to revive negotiations between the two sides on the basis of clear parameters and its commitment to the long-agreed terms of reference for the peace process, continue to be met only by Israeli violations, provocations and incitement. In this regard, I must also draw your attention to the decision of Israel to withhold the transfer of funds to the Palestinian National Authority, also as a punishment for the recent steps in UNESCO. These funds are monies collected by the occupying Power in the form of duties on goods that must transit through ports controlled by Israel and are destined for Palestinian markets, and the occupying Power is in no way entitled to those funds or to their obstruction. As in the past, we firmly reject this form of retaliation and collective punishment and call on Israel to release all Palestinian funds forthwith.

In closing, we stress that Palestine's application and admission to membership in UNESCO is consistent with its commitment to and respect for the Charter and resolutions of the United Nations and the principles enshrined therein and our commitment to the two-State solution for peace on the basis of the pre-1967 borders. We reaffirm the right of the Palestinian people to self-determination and the independence of their State of Palestine, with East Jerusalem as its capital, and reaffirm the legal, natural and historic right of our State of Palestine to take its rightful place among the community of nations. We appeal to the Security Council and all Member States of the General Assembly to stand by Palestine at this critical juncture and to uphold their legal obligations to ensure the realization of the rights of the Palestinian people and to ensure an end to this conflict and the achievement of peace and security for Palestine, Israel and the Middle East region as a whole.

Indeed, a viable and definitive solution to the conflict can only be achieved on the basis of international legitimacy and justice and never on the fleeting power of might over right. The Security Council must uphold its duties in this regard.

The present letter is in follow-up to our previous 409 letters regarding the ongoing crisis in the Occupied Palestinian Territory, including East Jerusalem, since

28 September 2000. These letters, dated from 29 September 2000 (A/55/432-S/2000/921) to 1 November 2011 (A/ES-10/537-S/2011/676) constitute a basic record of the crimes being committed by Israel, the occupying Power, against the Palestinian people since September 2000. For all of these war crimes, acts of State terrorism and systematic human rights violations committed against the Palestinian people, Israel, the occupying Power, must be held accountable and the perpetrators must be brought to justice.

I should be grateful if you would arrange to have the text of the present letter distributed as a document of the tenth emergency special session of the General Assembly, under agenda item 5, and of the Security Council.

(*Signed*) Riyad **Mansour**
Ambassador
Permanent Observer of Palestine to the United Nations

United Nations S/2011/681

Security Council

Distr.: General
3 November 2011

Original: English

Letter dated 3 November 2011 from the Permanent Representative of Eritrea to the United Nations addressed to the President of the Security Council

I have the honour to transmit herewith a letter from H.E. Osman Saleh Mohammed, Minister for Foreign Affairs of the State of Eritrea, in connection to the sanction resolution tabled in the Security Council (see annex).

I would appreciate if the present letter and its annex could be brought to the attention of the members of the Security Council and circulated as a document of the Security Council.

(*Signed*) Araya **Desta**
Ambassador
Permanent Representative

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Annex to the letter dated 3 November 2011 from the Permanent Representative of Eritrea to the United Nations addressed to the President of the Security Council

Please allow me to draw your attention to the latest draft resolution which purports to impose "additional sanctions" on Eritrea.

Although certain clauses and precise wording in the operative paragraph appears to be under continued negotiations, the gist of new measures under consideration include, among other things, (i) discretionary inspection of Eritrean cargo at seaports, airports and on the high seas and through transit by all States and "in particular States of the region to ensure strict implementation of the arms embargo"; (ii) prohibition of new investment "in the extractive industries and mining sectors in Eritrea"; (iii) curtailment of the 2 per cent recovery tax that Eritrea collects from its citizens in the diaspora through subtle due diligence requirements and indictment of Eritrean citizens; (iv) encumbrance of foreign trade transactions of Eritrea through prohibitive banking oversights and due diligence requirements; and (v) the possible inclusion of selected Government officials for travel ban and other measures.

The objective of these measures are too transparent to merit extensive discourse. To begin with, the provision that would virtually give a green light to Ethiopia and other powers that harbour belligerent intentions against Eritrea to inspect at will any cargo destined to the country is fraught with dangerous security implications. Indeed, this will only disrupt maritime traffic, curtail Eritrea's right to innocent passage, and otherwise sanction and embolden encroachment on its sovereignty by its adversaries. Surely, this provocative provision cannot promote regional peace and stability.

The prohibition of new investment "in the extractive industries and mining sectors in Eritrea" is simply meant to cripple future economic growth in the country. It has no direct linkages with the issues at hand, apart from broad, speculative conjecture, inserted in the report of the Monitoring Group, maintaining that "revenues from mining may potentially be diverted to destabilize activities". As explained in greater detail in Eritrea's reply to the report of the Monitoring Group, Eritrea's regional policy is firmly anchored in the promotion of a "safe and cooperative neighborhood". It has neither the desire nor the interest in the destabilization of the region. Furthermore, the gestation period of investments in the extractive industry is not less than seven years on average. This measure is thus really meant to curb Eritrea's future economic growth.

Eritrea has explained in detail the rationale, legality and scope of the 2 per cent recovery tax in its reply to the report of the Monitoring Group. As a matter of fact, the 2 per cent tax is not significant in government fiscal and budgetary terms. Its importance lies in maintaining the bondage of the diaspora with the home country and the consolidation of social responsibility, cultivated during the decades of struggle for national liberation, in the collective efforts at nation building. Hence, apart from its tenuous legality, any punitive measure that targets the recovery tax has political ramifications and is really aimed at undermining the cohesion and solidarity of the diaspora with their home country. This is precisely the sinister agenda that Eritrea's adversaries have been pursuing for years.

In the same vein, the plethora of banking impediments and other commercial encumbrances proposed in the draft resolution do not emanate from credible findings of Eritrea's misdemeanour or "punishable offenses". All these measures are being pushed by Eritrea's adversaries in order to undermine its developmental drive and to slow down and paralyse burgeoning foreign direct investment in the country by rendering the business environment as difficult and dysfunctional as possible. The travel ban on selected Government officials is primarily designed to reinforce the image of a "pariah State" that Eritrea's enemies have been peddling; again, for ulterior political motives. This is amply illustrated by the outrageous list of senior Eritrean Government officials that Ethiopia published last year.

There are other malignant procedural and substantive ramifications in the efforts under way that warrant profound scrutiny. The preamble of the draft resolution is replete with gross accusations of Eritrea's "destabilizing regional role" and "sponsorship of terrorism" that are not even borne out in the report of the Monitoring Group on Somali and Eritrea. Furthermore, Eritrea's comprehensive response has been totally ignored without serious efforts at validating the accusations levelled against it so as to ensure objectivity and neutrality.

The draft resolution is nominally sponsored by Gabon and Nigeria in a deliberate attempt to give it an African flavour. This is procedurally inappropriate and substantively flawed. The African Union has not passed a resolution calling for additional sanctions against Eritrea. The two countries are not parties to the matters under dispute. Indeed, in reality, the authors of the current resolution are the same architects that were behind Security Council resolution 1907 (2009).

Eritrea has all along maintained that resolution 1907 (2009), which was adopted by the Security Council in December 2009, is not based on fact and law. In this vein, Eritrea has relentlessly tried in the past two years to put its case to all United Nations Member States with the hope of seeking redress and annulment of this unwarranted resolution. Many facts, including WikiLeaks documents, now reveal that vindictive and unjustified punishment of Eritrea under the umbrella of the Security Council was countenanced and actively discussed by Eritrea's detractors as early as 2006 long before the crisis in Somalia assumed centre stage in this whole affair.

As we have explained in the past, resolution 1907 (2009) imposes on Eritrea an arms embargo while Eritrea remains a victim of Ethiopian aggression, with the latter occupying sovereign Eritrean territories in flagrant breach of international law; the African Union Charter on the sanctity of colonial boundaries; and relevant United Nations articles on the resolution of territorial disputes through arbitral mechanisms. But Ethiopia's violations of international law, which have jeopardized and continue to jeopardize regional peace and security, continue to be tolerated by the same Security Council that has seen fit to punish Eritrea unfairly. As we have emphasized on various occasions, the imposition of an arms embargo on Eritrea cannot be acceptable in principle as it undermines Article 51 of the Charter of the United Nations on the right of any Member State to self-defence in situations of occupation and aggression, as is indeed the case with Eritrea.

In view of all these realities and in the interests of justice and peace, I kindly ask for your efforts in seeking a profound and fair assessment of the whole affair with a view to ensuring that:

(1) The United Nations Security Council acts with neutrality, impartiality and fairness as it discharges its functions in the maintenance of international and regional peace and security;

(2) Resolution 1907 (2009) and all its sequels are scrapped on the basis of just and fair appraisal of the realities on the ground.

(*Signed*) Osman **Saleh**
Foreign Minister of the State of Eritrea

1 November 2011
Asmara

United Nations S/2011/682

Security Council

Distr.: General
4 November 2011

Original: English

Letter dated 3 November 2011 from the Secretary-General addressed to the President of the Security Council

Pursuant to Security Council resolution 1031 (1995), I have the honour to transmit the fortieth report on the implementation of the Peace Agreement on Bosnia and Herzegovina, covering the period from 21 April to 15 October 2011, which I received from the High Representative for Bosnia and Herzegovina (see annex).

I should be grateful if you would bring the report to the attention of the members of the Security Council.

(*Signed*) **BAN** Ki-moon

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Annex

Letter dated 2 November 2011 from the High Representative for Bosnia and Herzegovina addressed to the Secretary-General

Pursuant to Security Council resolution 1031 (1995), in which the Council requested the Secretary-General to submit to it reports from the High Representative in accordance with annex 10 of the General Framework Agreement for Peace in Bosnia and Herzegovina and the Conclusions of the London Peace Implementation Conference of 8 and 9 December 1995, I herewith present to you the fortieth report of the High Representative. I would ask for this report to be distributed to the members of the Security Council for their consideration.

This is my sixth report to the Secretary-General since assuming the post of High Representative for Bosnia and Herzegovina and European Union Special Representative on 26 March 2009. The present report covers the period from 21 April to 15 October 2011.

Should you or any Council member require any information beyond what is provided in the attached report or have any questions regarding its contents, I would be pleased to provide you with it.

(*Signed*) Valentin **Inzko**

Enclosure

Fortieth report of the High Representative for Bosnia and Herzegovina

21 April-15 October 2011

Summary

This report covers the period from 21 April to 15 October 2011. On 1 September, I formally turned over my duties as European Union Special Representative to Peter Sørensen, with whom I am cooperating closely. The consolidation of the European Union presence in Bosnia and Herzegovina represents a welcome step forward by the European Union to assume greater responsibility in guiding the reform process in Bosnia and Herzegovina in relation to the country's accession to the European Union. It also means that I will now be able to focus my energies solely on my mandate under annex 10 of the General Framework Agreement for Peace, including addressing ongoing challenges to the Agreement.

More than one year after the general elections of October 2010, Bosnia and Herzegovina remains without a new State-level government, a fact which both reflected and contributed to the ongoing deterioration of the political situation during the reporting period. In the absence of agreement on a 2011 budget, the State institutions have been funded under a restricted temporary financing mechanism since January. In this context, international credit-rating agencies downgraded the country's outlook, specifically citing the negative political situation. In its annual progress report on Bosnia and Herzegovina, the European Commission also noted the country's political problems.[a] On the economic front, registered unemployment at the end of June 2011 was estimated at approximately 43 per cent of the workforce, while foreign direct investments in the first half of 2011 decreased by 19.5 per cent over the same period in 2010.

During the reporting period, legal and political actions from Republika Srpska challenging Bosnia and Herzegovina State-level institutions, competencies and laws, and the authority of the High Representative under the General Framework Agreement and relevant resolutions of the Security Council have continued, as have other activities running contrary to the Agreement, in particular in relation to annexes 2, 4 and 10. As I outlined in my briefing to the Security Council on 9 May 2011, the Republika Srpska National Assembly adopted conclusions in April and a decision to hold a referendum on the decisions of the High Representative, including those establishing the Bosnia and Herzegovina Court and Prosecutor's Office, which formally disregard and/or reject the principles established under annex 10 and annex 4 of the Agreement, and thereby constitute a breach of the Dayton Agreement. Although the Republika Srpska National Assembly's adoption on 13 April of a referendum decision was repealed on 1 June, the controversial conclusions of the same date — many of which have not been explicitly repealed and remain problematic — have continued to influence Republika Srpska policies vis-à-vis the institutions of Bosnia and Herzegovina and the High Representative.

The use of inflammatory nationalistic rhetoric continued, including further statements by officials of the Republika Srpska in support of State dissolution and chauvinistic comments directed against other ethnic groups. In this regard, I would like to express my deep concern about recent public statements that challenge the statehood of Bosnia and Herzegovina by characterizing the country as a "state union" [*drzavna zajednica*], ignoring also the fact that Bosnia and Herzegovina was admitted to the United Nations as a Member State on 22 May 1992, together with Croatia and Slovenia. These statements undermining the constitutional arrangements provided for under the General Framework Agreement need to be taken seriously, especially in the light of other actions directly challenging the Agreement as set out in this and previous reports.

While the arrest on 26 May of General Ratko Mladic and his transfer on 31 May to the International Tribunal for the Former Yugoslavia in The Hague brought good news, political leaders in the Republika Srpska continued to challenge the rulings of the Tribunal and the International Court of Justice that qualified the massacre of Bosniaks who had sought refuge in the United Nations-protected area of Srebrenica in July 1995 as genocide.

Some Federation politicians have also used unwelcome rhetoric, and some leaders of HDZ BiH and HDZ 1990 continue to press for a third entity with a Croat majority and have revived the Croat National Council. The two leading Croat parties in Bosnia and Herzegovina continue to question the legality and legitimacy of the incumbent Federation government, demanding that it be reshuffled to include them, as the "sole legitimate representatives of the Croat people". In the Federation, some Bosniak political leaders escalated their rhetoric in response to statements by the Republika Srpska leadership and warned of possible conflict, were there to be an attempt to divide the country. The former Federation President, now a delegate in the Bosnia and Herzegovina Parliamentary Assembly, also made offensive statements, appearing to question the suitability of prosecutors from ethnically mixed marriages to carry out their functions.

In spite of tensions and controversy surrounding its formation, the Federation government has functioned well during the reporting period. Three seats in the entity's Constitutional Court remain vacant, preventing the court from ruling on vital national interest cases submitted to it, thereby affecting the protection of constituent peoples in the Federation. In addition, the Federation continues to be burdened by a large, expensive and multilayered government apparatus.

None of the outstanding items among the five objectives and two conditions necessary for the closure of the Office of the High Representative was fulfilled during this reporting period. Owing to the continuing stalemate over government formation following the elections of 3 October 2010, the old Council of Ministers continues in a caretaker capacity. This stalemate has had a negative impact on the ability to address long-needed reforms, including those needed for progress in Euro-Atlantic integration.

Through its continued presence, the European Union military mission in Bosnia and Herzegovina has continued to reassure citizens that the country remains safe and secure despite the difficult political situation. The High Representative supports the extension of the executive mandate under annexes 1 and 2 of the General Framework Agreement.

* "Overall, little progress was made by Bosnia and Herzegovina in improving the functionality and efficiency of all levels of government. One year after the general elections, a State-level Council of Ministers remains to be appointed. The political representatives lack a shared vision on the direction to be taken by the country. An effective coordination mechanism between the State, the Entities and Brcko District remains to be established as a matter of urgency regarding EU matters and the harmonisation of EU related legislation." (Commission Staff Working Paper, Bosnia and Herzegovina 2011 Progress Report.)

I. Introduction

1. This is my sixth report to the Secretary-General since assuming the post of High Representative for Bosnia and Herzegovina. It provides a narrative description of progress made towards attaining the goals outlined in previous reports, registers factual developments, logs relevant citations relating to the reporting period, and provides my assessment of mandate implementation in key areas, including the objectives and conditions which must be met before the Office of the High Representative can close. I have focused my efforts on facilitating progress in these areas, in line with my primary responsibility to uphold the civilian aspects of the General Framework Agreement for Peace, while also facilitating progress towards Euro-Atlantic integration. Regrettably, a substantial part of my efforts has been dedicated to addressing negative developments, in particular actions taken that challenge the Agreement and undermine the institutions of Bosnia and Herzegovina.

II. Political update

General political environment

2. The overall political environment was marked by stagnation, due in large part to the inability of the six largest political parties to form a State-level government. Opposition from the entities — in particular the Republika Srpska — continued to prevent the adoption of an adequate State-level budget for 2011. Consequently, State institutions have operated under restricted temporary financing since 1 January 2011, which has limited their capacity as well as their ability to meet their obligations.

3. A ray of hope emerged in September when the leaders of six parties (SDP, SNSD, SDA, SDS, HDZ BiH and HDZ 1990) finally began to engage in serious negotiations on government formation and the adoption of reforms to unlock progress towards European Union and NATO membership. The apparent readiness on the part of party leaders to consider backing off from maximalist positions in the direction of compromise solutions was a welcome change, but has so far not delivered concrete results.

Decisions of the High Representative during the reporting period

4. In the wake of the arrest and transfer of General Ratko Mladic to the International Tribunal for the Former Yugoslavia, I lifted all Tribunal-related decisions enacted by my predecessors on 10 June. These included bans on 58 individuals, orders blocking the accounts of 34 individuals, and a requirement of the SDS party to provide the Office of the High Representative with monthly financial reports.

Five objectives and two conditions for the closure of the Office of the High Representative

5. The Bosnia and Herzegovina authorities made no substantive progress during the reporting period towards meeting the State property objective. As noted in my previous report, I suspended the application of the Law on the Status of State Property Situated in the Territory of Republika Srpska and under the Disposal Ban (Republika Srpska State Property Law) pending a review of its constitutionality

before the Bosnia and Herzegovina Constitutional Court. On 15 July, the Constitutional Court announced that it will convene a public hearing in November regarding the Republika Srpska State Property Law, which was challenged in January by the Deputy Chair of the Bosnia and Herzegovina House of Peoples.

6. On 22 August, the Bosniak member of the Bosnia and Herzegovina Presidency submitted a request to the Bosnia and Herzegovina Constitutional Court to review the constitutionality of the Republika Srpska Law on Cadastre. As noted in my previous report, the Republika Srpska Law on Cadastre has been the subject of some public criticism and continuing legal challenges since its adoption by the Republika Srpska National Assembly in February. The application alleges, inter alia, that the law allows the Republika Srpska to usurp the property rights of State institutions and non-resident owners. On 23 September the Constitutional Court adopted a decision on an interim measure suspending the law pending the final decision of the Court. In response, on 26 September, the Republika Srpska government adopted the Decree on the Maintenance of Immovable Property Records and Rights to Immovable Property, which directs the Republika Srpska authorities to continue registering property rights pursuant to various Republika Srpska laws, including the Law on Cadastre, and thereby circumvents the Constitutional Court's interim measure. This puts the decree in direct violation of the Bosnia and Herzegovina Constitution, which states that decisions of the Constitutional Court are final and binding.

7. On 6 October, the Bosniak member of the Bosnia and Herzegovina Presidency applied anew to the Constitutional Court, alleging that the above-mentioned decree violates the Court's decision suspending the Republika Srpska Law on Cadastre. However, on the same day, the Republika Srpska government proposed new legislation — the Republika Srpska Law on Survey and Cadastre — which eliminates many of the controversial provisions under challenge before the Constitutional Court and, upon entry into force, would supersede the controversial Law on Cadastre. The Republika Srpska National Assembly adopted the new legislation in urgent procedure on 13 October, but it remains to be seen whether its entry into force will be halted or delayed in the Republika Srpska Council of Peoples by a Bosniak objection on grounds of vital national interest. The new law, following its entry into force, could lead to a decision of the Bosnia and Herzegovina Constitutional Court to terminate proceedings challenging the Republika Srpska Law on Cadastre.

8. The Bosnia and Herzegovina Commission for State Property met twice during the reporting period, but did not discuss draft legislation or sustainable apportionment of State property. Substantive discussion on these issues has been effectively suspended until the Bosnia and Herzegovina Constitutional Court rules on the pending challenge to the constitutionality of the Republika Srpska State Property Law. The Commission has focused on granting exemptions from the temporary prohibition on transfers of State property. In its letter of 29 September, the Commission formally requested that I amend my Order of 5 January to allow the Commission to grant exemptions to the temporary ban on ownership transfers of State property situated in Republika Srpska. I have not amended my Order; and while exemptions from the State property transfer ban remain permissible at other levels of authority in Bosnia and Herzegovina, no exemptions were granted during the reporting period.

9. Various parties have discussed aspects of an agreement addressing the defence property objective, but the discussions have thus far proved inconclusive.

10. Neither the Brcko District Supervisor nor I are able yet to conclude that all obligations under the Brcko Final Award have been fulfilled. Republika Srpska authorities continue to send ambiguous, and potentially problematic, signals regarding various commitments under the Brcko Final Award, including the question of the territorial boundaries of the Brcko District. This also raises questions about its compliance with obligations under annex 4 and annex 2 to the General Framework Agreement. The Office of the High Representative continues to seek a dialogue with Republika Srpska officials to resolve outstanding issues related to the territorial and other obligations stemming from the Final Award and other legal acts. To date, the Republika Srpska authorities have declined to provide assurances that they will fully honour annex 2 and all aspects of the Brcko Final Award. The Federation provided such assurances early in 2011.

11. Some other entity obligations to the Brcko District are not yet fully met, including resolution of the issue of entity citizenship and voting rights for residents of the District. On a more positive note, a sound legal basis for the supply of electricity to the District could be complete once permanent licences and tariffs for supply are in place.

12. Given Brcko District's strategic position, any future disagreement over implementation of the Final Award would potentially have negative consequences for the stability of the Brcko District and Bosnia and Herzegovina. The Office of the High Representative will continue, therefore, to take steps to ensure that both entities fully comply with their commitments under the Final Award. The Office will also continue to monitor whether the institutions inside Brcko District are functioning effectively and apparently permanently, as required by the Final Award as a precondition to the closure of the Arbitral Tribunal.

State-level institutions of Bosnia and Herzegovina

Constitutional reform

13. There was some limited progress in the area of constitutional reform during the reporting period in the context of the implementation of the 2009 ruling by the European Court of Human Rights in the *Sejdic-Finci* case.[1] On 10 October, the Bosnia and Herzegovina Parliamentary Assembly established an Interim Joint Committee to agree amendments to implement the Court's ruling.[2] The Committee has met three times and agreed on its method of work. However, the views of the political parties on how to implement the ruling remain far apart.

[1] On 22 December 2009, the European Court of Human Rights issued a judgement in the case of *Sejdić and Finci vs. Bosnia and Herzegovina*, which found portions of the Bosnia and Herzegovina Constitution to be discriminatory, in that citizens of Bosnia and Herzegovina who do not declare themselves as one of the three constituent peoples (Bosniaks, Croats or Serbs) are not eligible to stand for elections to the House of Peoples or the Presidency.

[2] The deadline set by the Parliamentary Assembly to prepare amendments to the Constitution is 30 November 2011, while the deadline for amendments to the Bosnia and Herzegovina Election Law is 31 December.

Presidency of Bosnia and Herzegovina

14. The Bosnia and Herzegovina Presidency continued to meet during the reporting period, holding five regular sessions and six urgent sessions. Cooperation within the Presidency has improved compared to the previous composition, although disagreements continue. Such disagreements were witnessed during the presentation of my previous semi-annual report to the Security Council on 9 May, and also in disagreements between Bosniak and Croat members on whether Bosnia and Herzegovina should endorse an independent investigation into illegal organ trafficking in Kosovo under the auspices of the Security Council. In both cases, the Presidency failed to formulate a joint position.

15. The Presidency extended the mandate for Bosnia and Herzegovina armed forces members in the International Security Assistance Force in Afghanistan. It also adopted a decision on recognition of the Interim National Council of Libya and a decision establishing diplomatic relations with South Sudan.

16. The Presidency looked into the matter of large quantities of explosives that went missing during the process of destroying surplus weapons and ammunition. It concluded that the missing explosives had not been destroyed as ordered by the Presidency, but were the subject of illegal trade between two named companies, and assigned the Bosnia and Herzegovina Ministry of Defence to address the matter.

17. During the reporting period, the Presidency continued to emphasize regional cooperation, participating in numerous regional visits including a trilateral meeting of the Heads of State of Bosnia and Herzegovina, Serbia and Turkey on 26 April in Karadjordjevo, Serbia. On 14 October, the Chair of the Presidency attended the twenty-second session of the Igman Initiative to promote regional dialogue, in Belgrade.

Council of Ministers of Bosnia and Herzegovina

18. In June, the Bosnia and Herzegovina Presidency nominated a candidate from SDP to the Chair of the Council of Ministers, but his candidacy failed to secure the necessary parliamentary support to form a government. Consequently, the Council of Ministers continued work in a caretaker capacity, adopting and sending into parliamentary procedure only a handful of laws and amendments to existing legislation, as well as enacting a number of appointments. On 30 September, the Council of Ministers adopted a revised proposal for the distribution of €96.2 million of financial assistance under the European Commission Instrument for Pre-Accession Assistance, thereby securing funds that had been put at risk by a dispute between the entities.

19. On 5 October, a dispute between the Council of Ministers and the Communications Regulatory Agency culminated in a decision by the Council of Ministers to suspend further meetings until the matter was resolved. I intervened on the matter in order to facilitate a resolution to the dispute. The Council of Ministers returned to work on 10 October.

Parliamentary Assembly of Bosnia and Herzegovina

20. Months of unsuccessful negotiations and delays in the appointment of delegates from cantonal assemblies to the Federation House of Peoples delayed both the inauguration of the Bosnia and Herzegovina House of Representatives and the

appointment of Bosniak and Croat delegates to the Bosnia and Herzegovina House of Peoples until 9 June. This delayed the formation of other working bodies of the Bosnia and Herzegovina Parliamentary Assembly and the election of parliamentary delegations.[3] As a consequence of this significant delay in the formation of the Parliamentary Assembly and ongoing political disputes within the parliament, very little legislation has been adopted since the elections of October 2010. One year after the elections, the Parliamentary Assembly has adopted only 10 laws, amending existing legislation.

Republika Srpska

21. Republika Srpska continues to combine legal and political actions challenging the State-level institutions, competencies and laws of Bosnia and Herzegovina, and the authority of the High Representative under the General Framework Agreement and relevant resolutions of the Security Council, while some of its officials make statements challenging the statehood of Bosnia and Herzegovina.

22. High-ranking Republika Srpska officials continue to use provocative, antagonistic rhetoric aimed at the State and the Bosniaks. Most recently, the Republika Srpska President asserted that the Bosniak people can only build their identity by destroying that of others.[4] These statements drew the ire of Bosniak politicians, including the Bosniak member of the Bosnia and Herzegovina Presidency, who in an open letter alluded to the possibility of future conflict should there be an attempt to divide the country.[5]

Aftermath of the decision on a referendum and conclusions of the Republika Srpska National Assembly

23. Under strong international pressure, the Republika Srpska National Assembly voted on 1 June to repeal its decision of 13 April to hold a referendum,[6] while adopting a series of conclusions intended to further interpret, amend and supplement the conclusions of 13 April. The repeal of the referendum was justified by referring to a need to respect the verbal agreement reached between the European Union High Representative for Foreign Affairs and Security Policy and the President of Republika Srpska, by which the Republika Srpska authorities would repeal the referendum decision and review the conclusions of 13 April and the European Union would open a structured dialogue on justice. While the new conclusions explain why a referendum is not needed for the time being, they do not affect the entity's claim

[3] The inauguration of the House of Representatives was completed on 20 May 2011 and that of the House of Peoples on 9 June, while all working bodies were appointed at the end of June.

[4] "The Bosniaks are a people that exist only in Bosnia-Herzegovina and only declared themselves a people sometime around 1993 … stubbornly trying to prove their national identity, which they can only do by destroying the nationality of others — primarily, of the other constituent ethnic groups of Bosnia". (Republika Srpska President Milorad Dodik, 14 October 2011.)

[5] "[T]rue patriots will defend the territorial integrity of Bosnia and Herzegovina at any moment … Srebrenica, Bratunac, Kozarac, Brčko, Višegrad, Foča, Trebinje and other places where Bosniaks perished will never be outside the territory of Bosnia and Herzegovina." (Bosniak member of the Bosnia and Herzegovina Presidency, Bakir Izetbegovic, 18 October 2011.)

[6] The proposed referendum question had been the following: "Do you support the laws imposed by the High Representative of the International Community in Bosnia and Herzegovina, particularly those pertaining to the Court of Bosnia and Herzegovina and the Prosecutor's Office of Bosnia and Herzegovina, and their unconstitutional verification in the Parliamentary Assembly of Bosnia and Herzegovina?"

that it can organize future referenda on matters that fall within the jurisdiction of Bosnia and Herzegovina or international organizations, including on the judiciary.

24. Despite the withdrawal of the planned referendum and the promise to review the conclusions of 13 April, those conclusions remain in force and were not altered by the conclusions of 1 June. They appear to be shaping the policies of the Republika Srpska authorities. For example, in June the National Assembly appointed a judge from Republika Srpska to the Bosnia and Herzegovina Constitutional Court without prior consultation with that body, as the rules of the Court require. This move seems to reflect the Republika Srpska policy — as contained in the conclusions of 13 April — to dispute the rules of the Constitutional Court.[7] In addition, at its June session, the National Assembly adopted a new Draft Law on Courts of Republika Srpska containing provisions that directly attack judicial independence, subjugate the judiciary to the executive, and undermine the responsibilities of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina.[8]

25. While the immediate threat of a referendum was removed, officials of the Republika Srpska continued to assert in the media the right of that entity to call a referendum, including on secession.[9] Officials from Serbia also spoke about a hypothetical Republika Srpska referendum on secession, also in the context of comments on the future of Kosovo.[10]

Removal of the Bosnia and Herzegovina flag from Republika Srpska government building

26. The flag of Bosnia and Herzegovina was removed from in front of the Republika Srpska government building on 10 May and replaced solely by the Republika Srpska flag.

[7] Conclusion 22 of the 29 individual conclusions that were adopted together specifies that: "The Republika Srpska National Assembly states that it is unacceptable for any Bosnia and Herzegovina judicial body to expand its competencies through its Book of Procedures."

[8] Conclusion 20 specifies that: "The Republika Srpska National Assembly demands that the Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina be amended and harmonized with the Bosnia and Herzegovina constitutional order and that every level of government in Bosnia and Herzegovina have its own High Judicial and Prosecutorial Council."

[9] "I am ready for it [Republika Srpska independence] to happen after me, that isn't a problem, but I think that it will happen. I am convinced that it will happen, because it is impossible to build a country in which there is not any consensus, in which there is not any respect, in which there exists a desire for outvoting". (Republika Srpska President Milorad Dodik, 1 June.)

[10] "If tomorrow, Republika Srpska decides in a referendum to take a decision about secession, what will they be? An independent state, or will they take a decision about joining Serbia and a common life with Serbia?" These remarks followed those of the President of Serbia, Boris Tadic, at a press conference on 5 May that were widely carried in Serbia's media, in which he stated that: "Preservation of the integrity of Bosnia and Herzegovina is an issue that is also linked with the preservation of Kosovo." The Foreign Minister of Serbia, Vuk Jeremic, told the Belgrade television station B92 on 22 April that "I don't see why our support for democratically made decisions of the institutions of Republika Srpska — which are in harmony with the laws and constitution of Bosnia and Herzegovina — represents a problem for anyone".

Adoption by the Republika Srpska National Assembly of controversial police officials law

27. On 20 July, the Republika Srpska National Assembly adopted amendments to the Republika Srpska Law on Police Officials, despite written notification from the Office of the High Representative that certain provisions appear to call into question the compliance of Bosnia and Herzegovina with the letter of April 2007 from the President of the Security Council on persons denied certification. Both the European Union Police Mission and the Office of the High Representative had also raised other concerns about the amendments in writing. Specifically, the Police Mission said that several amendments may be inconsistent with the core principle of a professional, reliable and efficient police organization that is transparent and accountable. However, at a meeting on 21 September with the Office of the High Representative, the Republika Srpska Ministry of the Interior signalled willingness to demonstrate its continued compliance with the presidential letter, which was followed by another positive meeting in October.

Constitutional amendment to increase number of deputy speakers in the Republika Srpska National Assembly

28. The Republika Srpska National Assembly adopted in June a constitutional amendment increasing the number of deputy speakers in the Assembly. Whereas previously there had been two deputy speakers, there will be from two to four. The constitutional amendment was a welcome step introduced to ensure ethnic balance among the speaker and deputy speakers.

Federation of Bosnia and Herzegovina

Government formation crisis

29. Following the formation of a new Federation government on 17 March by the "Platform" Coalition of parties (SDP, SDA, HSP, NSRzB), tensions remain between this group of parties and HDZ BiH and HDZ 1990.[11] The HDZ parties were left out of the Federation government after rejecting a compromise package on government formation proposed by the international community. The HDZ parties declared for principled reasons their intention at that time to enter into opposition in the Federation. The March crisis in government formation had been precipitated by the refusal of the HDZ bloc parties in some cantons to appoint delegates to the Federation House of Peoples for several months after the constitutionally mandated deadlines had passed. The election of all delegates to the Federation House of Peoples was completed only in May, about a half a year after the deadline had passed. Tensions between these two blocs of parties were also reflected in some cantons within the Federation, and the HDZ parties continued to refer to the current Federation government as illegitimate.

Revival of Croat National Assembly

30. The extra-institutional Croat National Assembly convened on 19 April in Mostar and has served largely as a platform for HDZ BiH and HDZ 1990. It was convened to express Croat dissatisfaction over the newly appointed Federation

[11] Details regarding the formation of the Federation government are available in the thirty-ninth report of the High Representative (see S/2011/283).

government, which — according to the Croat National Assembly — lacked legitimately elected Croats. At that meeting, the Croat National Assembly adopted a resolution demanding constitutional reform, including the option of a federal unit (third entity) with a Croat majority. On 5 May, the Presidency of the Croat National Assembly formed bodies charged with "coordinating the interests of the Croat people". At its session on 20 September, the Assembly called on the governments of cantons with Croat majorities not to accept and to challenge certain decisions by the allegedly "illegal" and "unconstitutional" Federation government. The President of HDZ 1990 subsequently clarified that the Presidency of the Croat National Assembly had ordered its members, who are also cantonal officials, to respect the Constitution, while challenging all government decisions — which they a priori deemed illegal — through the courts. Nevertheless, these events raise concerns about the risk of parallel governing structures eventually emerging. It is also worth noting that the Croat National Assembly decided to establish its presence abroad by establishing representative offices in major capitals.

Cantonal governments

31. Three of the 10 cantons in the Federation have yet to form governments. In the Herzegovina-Neretva and Central Bosnia Cantons, SDP, SDA and HDZ BiH seem to have come close to agreeing on terms that would make coalition governments possible, although final agreement has remained elusive. In July, I intervened to ensure respect for the constitutional order in the Central Bosnia Canton, after a new government took office, despite the fact that vital national interest had been invoked by the Croat caucus and the Federation Constitutional Court had not ruled on the matter. After my intervention the acting government returned to office and I believe this has also played a role in creating space for negotiations on a new government which are now well advanced. This is just one of many examples of how I have used the authority of my mandate to overcome disputes and to facilitate outcomes that are fully in accordance with the General Framework Agreement.

32. The third canton that remains without a government is Canton 10, where there is little sign of progress in reaching a political agreement, owing in large part to a dispute between HDZ BiH and HDZ 1990. Livno, the capital of Canton 10, has also been the scene of a dispute over the reconstruction of a mosque, which has the potential to raise inter-ethnic tensions in that town.

33. A court decision is pending for Posavina Canton, where the new government does function but the Bosniak caucus in the Assembly has submitted a vital national interest complaint over the fact that the new government is mono-ethnic and does not mirror the 1991 census. A similar situation exists in West Herzegovina Canton, where the Assembly decided to ignore the existence of Bosniak and Serb delegates, electing the Speaker of the Assembly in disregard of the required legal procedures.

Adoption of draft genocide denial law by the Federation House of Representatives

34. On 28 September, the Federation House of Representatives adopted a draft amendment to the Federation Criminal Code that would criminalize the denial of genocide. The draft amendment still has to undergo several steps before full adoption by the parliament. It envisages imprisonment of three months to three years in cases of denial of genocide, war crimes, crimes against humanity and other

crimes under international law. A similar initiative was proposed at the State level in August 2009, but was rejected.

Response of Federation Parliament to referendum decision of the Republika Srpska National Assembly

35. The Federation House of Representatives and House of Peoples held a special joint session on 27 April in order to define the Federation's position in relation to the referendum decision of 13 April of the Republika Srpska National Assembly and adopted a document entitled "Declaration on European and NATO Commitment". In presenting the document, the Speaker of the Federation House of Representatives said that "[w]e underline that the Federation and the Republika Srpska have the same status, i.e., that they are merely two entities in Bosnia and Herzegovina, while the state of Bosnia and Herzegovina carries sovereignty, territorial integrity and international status".

III. Public administration

36. Numerous senior civil service appointments remain long overdue at the State level.[12] The Office of the Bosnia and Herzegovina Public Administration Reform Coordinator reported to the Council of Ministers that the Public Administration Reform Strategy and its action plans have been revised and the implementation rate is now approximately 50 per cent.

37. Notwithstanding the 2010 rulings of the Federation Constitutional Court that certain articles of the Federation Law on Ministries and the entity's Law on Civil Service are not in compliance with the Federation Constitution, the Law on Civil Service has yet to be harmonized with the Constitutional Court Decision.

IV. Entrenching the rule of law

National Justice Sector Reform Strategy

38. At the sixth Ministerial Conference on the implementation of the Justice Sector Reform Strategy in Bosnia and Herzegovina for the period from 2008 to 2012, convened on 26 July 2011, stakeholders supported the initial recommendations of the first session of the European Union structured dialogue. At that session, the European Commission had highlighted that the Justice Sector Reform Strategy addressed many issues that are relevant to the future European integration of Bosnia and Herzegovina, and called upon all parties to reinforce their coordination and cooperation in implementing the Strategy. The participation of the entities' Ministries of Justice in implementing the Strategy remains inadequate.

39. In terms of implementation of the Justice Sector Reform Strategy, the overall breakdown includes a total of 204 activities (within 61 programmes) that should

[12] Including the appointment of a new Head of the Communications Regulatory Agency (more than three years overdue), members of the Communications Regulatory Agency Council (a year and a half overdue), and the General Manager of the Company for the Transmission of Electric Power in Bosnia and Herzegovina (one year overdue). The Acting Head of the Indirect Tax Authority has been appointed on a temporary basis twice, in violation of applicable laws.

have been implemented between January 2009 and June 2011. Of these, 45.1 per cent were fully implemented, 31.9 per cent partially implemented and 23 per cent not implemented. However, these numbers are misleading as most of the claimed successes were either of lesser importance or were actually achieved by the High Judicial and Prosecutorial Council.

40. The Ministerial Conference noted that answers to the European Union structured dialogue questionnaire would be compiled in one document, but that it was agreed that the document would include separate positions of the Republika Srpska, relating to State-level judicial institutions and the High Judicial and Prosecutorial Council. This reflects the Republika Srpska position that the State-level Court of Bosnia and Herzegovina, and therefore also the State-level Prosecutor's Office of Bosnia and Herzegovina, are unconstitutional, and that the Court's present jurisdiction is unconstitutional. The Republika Srpska continues to present this position, in spite of two rulings by the Bosnia and Herzegovina Constitutional Court (2002 and 2009), confirming the constitutionality of the Court of Bosnia and Herzegovina and its jurisdiction. The Republika Srpska position is that the judicial council should be split from the prosecutorial council, and that such councils should be established at the entity level. The position seeking to re-establish entity level councils disregards the Agreement on Transfer of Certain Entities' Responsibilities through Establishment of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, signed in March 2004 by the Republika Srpska government, the Federation government and the Bosnia and Herzegovina Council of Ministers.

War Crimes Prosecution Strategy

41. Implementation of the War Crimes Prosecution Strategy remains slow, fuelling public criticism of insufficient progress in prosecuting war crimes. On the positive side, a database has been established, and categorization and determination at which level — State or entity — identified war crimes cases shall be investigated and/or tried is under way.

Other rule of law issues

42. The Federation Constitutional Court still lacks three out of nine judges, which means that the Vital Interest Panel of the Federation Constitutional Court has been incapacitated for over three years, thereby affecting the protection of constituent peoples in the decision-making process in the Federation. The High Judicial and Prosecutorial Council adopted its final proposal on the list of qualified candidates on 23 September 2011, and the procedure is now with the President of the Federation, who with the concurrence of the two vice-presidents needs to nominate candidates to the Federation House of Peoples for appointment.

43. Although the total number of international judges in the War Crimes Department of the Court of Bosnia and Herzegovina was planned to drop from four to three, the mandate of one judge was prolonged until 2012 because of her involvement in a war crimes trial that cannot be completed sooner.

44. The integration of the Registries of the Court of Bosnia and Herzegovina and of the Prosecutor's Office of Bosnia and Herzegovina into domestic institutions continued to lack the necessary support of the Bosnia and Herzegovina Ministry of Justice and Ministry of Finance and Treasury. Additional premises, updating of the computer system, regulating the status of the Court police and completion of the

integration into the Ministry of Justice of the Criminal Defence Service remain essential steps that need to be addressed.

High Judicial and Prosecutorial Council working group

45. The High Judicial and Prosecutorial Council's working group tasked to draft amendments to the Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina continues its work, concentrating on the composition of the Council, election of its members, and appointment and discipline of judges and prosecutors. While there was no indication that the plan of the Bosnia and Herzegovina Ministry of Justice to wait for the Council's initiative on amendments and then to appoint a new, more restricted working group to prepare the final text of the amendments to be submitted to the Council of Ministers was changed, there are signs that the High Judicial and Prosecutorial Council does not want to send the amendments into parliamentary procedure in the current political atmosphere.

Fight against corruption

46. The suspension by the High Judicial and Prosecutorial Council of the Bosnia and Herzegovina Chief Prosecutor amid a corruption scandal regarding the alleged illegal export of arms and ammunition demonstrated the Council's capacity to react in disciplinary cases. However, the scandal may also have seriously undermined citizens' trust in the Bosnia and Herzegovina judiciary. The suspension was pronounced on 1 July by the Disciplinary Commission of the High Judicial and Prosecutorial Council and further confirmed after appeal on 8 July. In October, it was reported that the Disciplinary Counsel had reached a plea agreement with the suspended Chief Prosecutor, by which he admitted previously denied contacts with certain individuals, in exchange for accepting a more junior position within the District Prosecutors' Office of Banja Luka in the Republika Srpska.

New obstacles to judicial independence

47. On 26 August, the President of Republika Srpska, on his own behalf and that of the Serb member of the Bosnia and Herzegovina Presidency, sent an invitation to persons from the Republika Srpska working in the State-level institutions to a meeting with the leadership of their political party, the Alliance of Independent Social Democrats. The announced agenda of the meeting was "current political activities on the level of the joint authorities of Bosnia and Herzegovina, trends and tasks during the mandate duration, realization of and deviations from the Dayton Peace Accord and the positioning of Republika Srpska". The list of invitees included judges and prosecutors in the High Judicial and Prosecutorial Council coming from Republika Srpska, as well as the President and a judge of the Bosnia and Herzegovina Constitutional Court. The majority of the invited judges and prosecutors did not attend. This caused the Republika Srpska President to threaten publicly that those State-level judicial officials would not be reappointed.[13]

[13] "No one from the Bosnia and Herzegovina High Judicial and Prosecutorial Council came, along with the Constitutional Court President. The President of the Constitutional Court was elected by the Republika Srpska National Assembly and a person elected by the Republika Srpska National Assembly must have responsibility towards the Republika Srpska. In case they do not justify their absence from this meeting they will be considered as disqualified." (Republika Srpska President Milorad Dodik, 4 September 2011.)

48. At its session in June, the Republika Srpska National Assembly adopted the new Draft Law on Courts of Republika Srpska at the first reading. The draft contains provisions that undermine the independence of the judiciary from the executive. The High Judicial and Prosecutorial Council, the Republika Srpska Association of Judges and the Organization for Security and Cooperation in Europe (OSCE) have submitted comments on the draft law, expressing concerns.

Public security and law enforcement

49. The ongoing initiative to update current legislation on internal affairs at the Federation and cantonal levels has stalled, owing to disagreements between police authorities and Ministers of the Interior. On 15 June, cantonal Ministers of the Interior prepared alternative draft legislation that appears to reintroduce unacceptable levels of political control over the work of the police. The Federation and cantonal police commissioners want increased legal and budgetary independence for operational policing matters along the lines of the long-term reforms originally initiated by the International Police Task Force.

50. On 14 April 2011, the Bosnia and Herzegovina Council of Ministers adopted amendments to the Bosnia and Herzegovina Law on Police Officials to permit the Directorate for Police Coordination to employ active police officials directly from other police bodies in Bosnia and Herzegovina until 31 December 2012 and forwarded the amendments to the Bosnia and Herzegovina Parliamentary Assembly for procedure. This temporary exemption from normal employment procedures could result in accelerated recruitment of new staff in the Directorate.

51. In parallel to the process described above, a working group composed of the European Union Police Mission, the Office of the High Representative, the International Criminal Investigative Training Assistance Program and representatives of the State, entity, cantonal and Brcko District authorities has reviewed the Laws on Police Officials currently in force at State, entity, cantonal and Brcko District levels. The European Union Police Mission is preparing a report on the working group's meetings for presentation to working group representatives at the next meeting, tentatively scheduled for mid-October 2011. The Republika Srpska Ministry of the Interior did not officially join the working group but attended sessions in the capacity of observer.

V. Cooperation with the Tribunal

52. With the arrest of Ratko Mladic on 26 May, all persons indicted by the International Tribunal for the Former Yugoslavia in relation to war crimes committed in Bosnia and Herzegovina have been apprehended. Mladic had been a fugitive since his indictment on 25 July 1995. A number of protest rallies were organized in the Republika Srpska in response to Mladic's arrest. As Mladic was the last remaining fugitive accused of crimes related to the Bosnian war, I lifted all remaining bans on officials related to non-cooperation with the Tribunal on 10 June. During the reporting period, the cooperation of Bosnia and Herzegovina with the Tribunal remained satisfactory, although local institutions showed a less than dedicated approach to ensuring that individuals responsible for war crimes serve

their sentences, as shown in four major cases of escape from the territory of Bosnia and Herzegovina.[14]

VI. Reforming the economy

Economic indicators[15]

53. Certain economic indicators for the first six months of 2011 show signs of improvement. Compared to the same period in 2010, exports increased by 20.5 per cent and imports by 18.2 per cent, which has caused a 15.9 per cent increase in the total foreign trade deficit. Total industrial production in Bosnia and Herzegovina rose by 7.7 per cent (5 per cent in the Federation and 3.6 per cent in the Republika Srpska). The average net salary in Bosnia and Herzegovina amounted to KM 813, an increase of 2.4 per cent compared to the same period in 2010, while the average pension amounted to KM 336, a 0.9 per cent decrease. Annual inflation was estimated at 3.6 per cent. At the same time, unemployment and investments remain worrisome: registered unemployment at the end of June 2011 was estimated at more than 527,000 people, approximately 43 per cent of the workforce, while foreign direct investments in the first half of 2011 decreased by 19.5 per cent over the same period in 2010.

54. On 16 May, Moody's Investors Service lowered the credit rating outlook of Bosnia and Herzegovina from stable to negative, which could downgrade the country's credit rating of B2 in the next 12 to 18 months. The decision is based on the assessment that the political situation in the country is deteriorating.[16] Standard & Poor's took a similar decision on 28 July.[17]

Indirect taxation system

55. The Governing Board of the Indirect Taxation Authority (ITA) met four times in the past six months. Building on the meeting of 22 July, which resulted in an

[14] Radovan Stankovic, sentenced to 20 years' imprisonment by the Court of Bosnia and Herzegovina for crimes against humanity committed in 1992 in Foca, escaped from prison in Foca in May 2007 with the assistance of local authorities. He remains at large. His case was the first to be transferred by the Tribunal to the Court of Bosnia and Herzegovina. Three other individuals sentenced for crimes against humanity by the Court of Bosnia and Herzegovina remain at large. Two indictees, sentenced to 13 years and 17 years respectively, escaped in May 2009 and May 2010 while under prohibitive measures awaiting delivery of their final verdicts. In December 2010 a fourth accused escaped just before a first instance sentence of 27 years' imprisonment for crimes against humanity against him was to be rendered.

[15] *Sources*: Bosnia and Herzegovina Economic Planning Directorate, Statistics Agency, Foreign Trade Chamber, Ministry of Foreign Trade and Economic Relations.

[16] Moody's assigned the first credit rating to Bosnia and Herzegovina on 29 March 2004 (B3 with positive outlook), upgrading it on 17 May 2006 to B2 with stable outlook as a result of the 2004-2006 reforms and achievements strengthening the country's political and economic stability. The Moody's decision of 16 May 2011 to change the credit rating outlook from stable to negative is the first rollback in the credit rating history of Bosnia and Herzegovina as assigned by Moody's.

[17] Standard & Poor's assigned its first credit rating to Bosnia and Herzegovina on 22 December 2008 (B+ with stable outlook), confirming it on 8 December 2009. The Standard & Poor's decision of 28 July 2011 to change the credit rating outlook from stable to negative is, therefore, the first rollback in the credit rating history of Bosnia and Herzegovina as assigned by Standard & Poor's.

agreement on new indirect tax revenue allocation coefficients applicable to the third quarter of 2011,[18] the Governing Board made further progress at its session on 7 September. At that session, the Governing Board — on the basis of a temporary rebalancing of the collected and distributed indirect tax revenue — agreed on debt settlement for 2008, 2009 and the first six months of 2010 and 2011. Under the agreement, which took effect on 14 September and will be implemented by the end of November 2011, the Federation would repay approximately KM 33.8 million to the Republika Srpska.[19] While the second half of 2010 remains disputed and continues to cause tension between the entities,[20] the issue will probably be addressed in the forthcoming period, following an additional analysis of the relevant data by the Governing Board's Final Consumption Unit.

56. The Republika Srpska continues to challenge the indirect taxation system, including the State's competence for indirect taxation. At the session of 10 May of the ITA Governing Board, the Republika Srpska Finance Minister called for the breakup of the single account and the introduction of entity jurisdiction over indirect tax revenue collection. At meetings with the Office of the High Representative on 10 June, the Republika Srpska Prime Minister and Finance Minister both advocated a split of the single account into three parts — Federation, Republika Srpska, Brcko District — and the financing of the State through lower-level transfers. On 9 September,[21] the Republika Srpska Prime Minister repeated his demand for the creation of separate sub-accounts for the collection of indirect tax revenue. He also described the existing fiscal structure of Bosnia and Herzegovina as unsustainable and called for a new one. In an interview on 5 September, the Republika Srpska President[22] stressed that the system of indirect taxation in Bosnia and Herzegovina had been imposed contrary to the Constitution and that the Republika Srpska would "take decisions questioning the functioning of the system".[23]

[18] This is only the second time in the past three years that the ITA Governing Board has complied with its obligation under the 24 June 2008 *Rulebook on Coefficient Calculation and Payments to the Entities*, which clearly states that new coefficients should be agreed on a quarterly basis.

[19] The debt results from the ITA Governing Board's failure to adjust indirect tax revenue allocation coefficients to the entities' final consumption on a quarterly basis, as provided for in the 24 June 2008 *Rulebook on Coefficient Calculation and Payments to the Entities*. In the absence of the required adjustments, the coefficients agreed on 24 June 2008 were applied for over two years.

[20] The Federation requested an explanation for a significant increase in the Republika Srpska final consumption in the second half of 2010, which led to the increase in the calculated allocation coefficient for the Republika Srpska and thus to the amount claimed by the Republika Srpska from the Federation. Doubts over the data in question were also expressed by the ITA Governing Board's Final Consumption Unit. The Federation government expressed its willingness to settle any debt for this period following verification of the data.

[21] *Glas Srpske* of 9 September 2011.

[22] *OBN, Telering* programme of 5 September 2011.

[23] Contrary to these claims, the indirect taxation system was established in line with the Bosnia and Herzegovina Constitution. The transfer of competence for indirect taxation to the State and the conclusion of the corresponding Transfer Agreement were approved by the Republika Srpska National Assembly on 30 October 2003 and by the Federation Parliament on 3 December 2003. Following this approval, the two entity Prime Ministers signed the Transfer Agreement on 5 December 2003 and then both Houses of the Bosnia and Herzegovina Parliamentary Assembly adopted the Law on Indirect Taxation System on 29 December 2003. Any challenge to the existing system of indirect taxation would, therefore, represent a rollback on a previously agreed reform that could negatively affect the financing of the State — since it would make it de facto dependant on entity transfers as in the pre-indirect taxation system reform state of affairs. Such changes would also affect the financing of Brcko District, which is dependant on the existing system of indirect taxation on the basis of the High Representative's decision of 4 May 2007.

Challenges to the fiscal sustainability of State institutions

57. Entity disputes within the ITA Governing Board have spilled over to the Bosnia and Herzegovina Fiscal Council, which had not met since February before finally convening on 12 October. A Global Framework of Fiscal Balance and Policies in Bosnia and Herzegovina for the period 2011-2013 has still not been adopted.[24] In its absence, international financial disbursements, including the European Union Macro-Financial Assistance, remain on hold. This increases pressure on the entities and forces them to seek alternatives — such as resorting to borrowing — to cover budget deficits and meet their financial commitments. In addition to this, the Republika Srpska Prime Minister reiterated on 26 July[25] his earlier claims[26] that the Republika Srpska is one of the two co-founders of the Central Bank of Bosnia and Herzegovina and that it has a right to its profits, and called for Central Bank profits to be split between the Republika Srpska and the Federation and not paid to State institutions, as the State "had not contributed to the initial founding capital of the Central Bank of Bosnia and Herzegovina and was therefore not its founder".[27]

58. On 14 July, the 2011 State budget proposal failed to receive the required entity majority from delegates elected from the Republika Srpska and was rejected by the Bosnia and Herzegovina House of Representatives. The Bosnia and Herzegovina Ministry of Finance and Treasury revised the previous budget proposal and submitted it to the Presidency for a new procedure. Although the proposal takes into account the interests of both the State and the entities and is in line with the principles agreed at the joint meeting of the State and entity Finance Ministers in Vlasic held on 13 July (attended by representatives of the Office of the High Representative and the European Union), it has not been considered to date because of indications that the Republika Srpska will continue to oppose it. In the absence of a budget, the State institutions are forced to remain on restrictive temporary financing, which not only affects their ability to meet their legal obligations and integration requirements, but also jeopardizes their financial sustainability.

59. Statements by senior Republika Srpska officials indicate that they will continue to oppose budget proposals which would secure for the State institutions the revenues needed at least to maintain the same budget level and the same level of operations as in 2010. Federation officials have also declined so far to support the State's requested share of disbursements from the single account for the 2012

[24] Although this document should have been adopted by the end of May 2010 to allow for the preparation of 2011 budgets at all levels, it has not been agreed to date due to a disagreement between the entities and the State on the State's share in indirect tax revenue in 2011.

[25] Media statement by Republika Srpska Prime Minister Aleksandar Dzombic on 26 July 2011, as reported by the Republika Srpska News Agency.

[26] Media statements by Republika Srpska Prime Minister Aleksandar Dzombic reported, among others, by ONASA (Independent News Agency) on 30 April 2011, the Republika Srpska News Agency on 9 May 2011, and BLIC on 12 May 2011.

[27] The Central Bank of Bosnia and Herzegovina was explicitly provided for in annex 4 of the General Framework Agreement as the sole authority for issuing currency and for monetary policy throughout Bosnia and Herzegovina, whose responsibilities shall be determined by the Bosnia and Herzegovina Parliamentary Assembly. The 1997 Law on the Central Bank further specifies that the Central Bank shall be entirely independent from the Federation, the Republika Srpska, any public agency and any other authority in the pursuit of its objective and the performance of its tasks, while the 2005 Amendments to the Law regulate the manner of the allocation of Central Bank net profits, including payments on this basis to the State budget.

budget. It has also been announced that a report on the financial aspects of the functioning of the Bosnia and Herzegovina institutions is being prepared by the Republika Srpska government for debate by the Republika Srpska National Assembly. In the light of these developments, there is growing concern that the budget is being used to challenge the institutions and competencies of the State. In line with my mandate, this is a matter I take very seriously.

Ongoing obstruction of the Bosnia and Herzegovina electricity transmission company

60. The entities continued to disagree on issues related to the management of the Bosnia and Herzegovina electricity transmission company (TRANSCO)[28] which is still grappling with the problems following from two earlier attempts by Republika Srpska authorities and representatives in the company to unilaterally dissolve it (in 2008 and 2009).

61. The State Electricity Regulatory Commission warned TRANSCO about the ongoing stalemate in the adoption of investment plans (since 2008) and the absence of investment despite TRANSCO investment funds accumulating to over KM 200 million. It also warned TRANSCO about its refusal to connect new customers to the transmission network and the negative consequences of employee lawsuits triggered by the General Manager's non-compliance with the company's statute. As a consequence of the latter, the company has thus far paid KM 17.4 million in damages, which makes about 83 per cent of TRANSCO's total debt (KM 21 million).[29] New appointments are also blocked, and all of the company's management and most of its Management Board are still in a caretaker mandate (the General Manager since September 2009). Moreover, the company no longer has an Audit Board. This, among others, affects the Company's audit for 2010, as the TRANSCO statute calls for completing an independent audit within 120 days of the end of the previous fiscal year (end of June) and the auditor for 2010 was selected only at the end of July 2011.

62. In addition, threats of unilateral action re-emerged on 12 October, when the Republika Srpska government reportedly adopted a conclusion announcing the establishment of a Republika Srpska electricity transmission company if the problems in TRANSCO were not resolved by the end of the year. Regrettably, the Republika Srpska authorities have so far failed to provide my office with the text of that conclusion.

63. Despite these problems, the electricity transmission network is being maintained and "the company is showing good business results".[29]

[28] TRANSCO was established by the *Law Establishing the Company for the Transmission of Electric Power in Bosnia and Herzegovina*, which was adopted by the Bosnia and Herzegovina Parliamentary Assembly in 2004 following the 2003 agreement between the two entity Prime Ministers on the basis of article III.5(b) of the Bosnia and Herzegovina Constitution.

[29] 10 August 2011 report, as sent to the Bosnia and Herzegovina Ministry of Foreign Trade and Economic Relations by TRANSCO Acting General Manager Dusan Mijatovic.

VII. Return of refugees and displaced persons

64. Implementation of the Annex 7 Strategy remained slow during the reporting period. There is a particular need to address the living conditions of the remaining 8,600 internally displaced persons in collective centres and to create durable housing solutions. This is the most vulnerable group of the approximately 113,000 internally displaced persons who remain.

65. A UNHCR envoy, appointed early in 2011 to work on the protracted displacement situation in the Western Balkans, visited Bosnia and Herzegovina and the region numerous times in 2011 to support the governments in devising a regional programme for durable solutions for the most vulnerable. Bosnia and Herzegovina plays an important role in this process, with the Ministry for Human Rights and Refugees serving as the regional coordinator. The Bosnia and Herzegovina component of the regional programme complements the revised Annex 7 Strategy, which will be presented at a donors conference in 2012. The Office of the High Representative will continue to support the efforts of the UNHCR office in Bosnia and Herzegovina to ensure full implementation of annex 7.

VIII. Media development

66. There has been no progress in implementing the public broadcasting legislation adopted in January 2006. On the contrary, the three public broadcasters constituting the system continue to disagree on the system's very structure. Consequently, the Board of Governors of the Public Broadcasting System failed to adopt the statute to establish the Corporation, which is crucial for the switchover to the digital terrestrial signal, a task which Bosnia and Herzegovina institutions hoped to complete in 2012. The Bosnia and Herzegovina Parliamentary Assembly has not appointed new governors for the Public Broadcasting System, even though the mandate of several current governors is expired. The Communications Regulatory Agency is still functioning with an acting Director General and a Council whose mandate has expired. This situation is affecting the Agency's credibility and its operations.

67. From January until September 2011, attacks against the media increased 30 per cent compared to the same period in 2010. The Free Media Helpline, a service operating within the Bosnia and Herzegovina Union of Journalists, registered 42 cases of threats and pressures, physical attacks, denial of information, mobbing, and one case of a death threat.

IX. Mostar

68. The Mostar authorities elected in 2008 continue to struggle to build on the progress made between 2004 and 2008 with the assistance of the Office of the High Representative in integrating the city. After a notable delay, a ruling of the Bosnia and Herzegovina Constitutional Court requiring limited changes to the electoral system for Mostar finally entered into force on 16 June. The deadline for the Bosnia and Herzegovina Parliamentary Assembly to adopt the necessary changes to the Election Law expires on 16 December. No progress has been made on this issue

during the reporting period. My Office will be working to facilitate agreement in the months ahead.

X. Defence reform

69. On 19 May, the Chair of the Bosnia and Herzegovina NATO Coordination Team tabled a proposal for the Team's consideration, calling for the ownership and registration of prospective immovable defence properties on behalf of Bosnia and Herzegovina. Although not required by the Law on Defence of Bosnia and Herzegovina for the transfer of non-prospective defence properties to municipal authorities, the proposal was an attempt to reaffirm the commitment of Bosnia and Herzegovina to fulfil all conditions for the activation of the NATO Membership Action Plan. In spite of this proposal, there has been no breakthrough and the responsibility to act continues to rest primarily with the Bosnia and Herzegovina Council of Ministers and entity governments.

70. On 28 April, and in line with a request from both the Bosnia and Herzegovina Presidency and the Bosnia and Herzegovina Minister of Security, the United States Embassy, OSCE and the United Nations Development Programme co-signed and forwarded a set of recommendations for improving the weapons export regime to the Ministry of Foreign Trade and Economic Relations.[30] On 11 May, the Council of Ministers agreed to support an addendum to the instruction on terms and procedure for the issuance of permits for foreign trade exchange of goods and services of strategic importance for the safety of Bosnia and Herzegovina.[31]

71. The Bosnia and Herzegovina Minister of Foreign Trade and Economic Relations has since inserted the addendum to the Law on Control of Foreign Trade Exchange of Goods and Services of Strategic Importance for the Safety of Bosnia and Herzegovina. As a consequence, the Bosnia and Herzegovina Presidency ban on weapons exports no longer applies.

XI. Intelligence reform

72. The Bosnia and Herzegovina Intelligence-Security Agency came under severe public pressure on several occasions during the reporting period.

73. Of further concern, at its session on 18 August, the Republika Srpska government decided to initiate the drafting of a Republika Srpska Law on Protection of Secret Data. The Bosnia and Herzegovina Law on Protection of Secret Data assigns exclusive authority for the protection of secret data with the State of Bosnia and Herzegovina. An attempt by an entity authority to regulate this area would be

[30] As a reminder, on 17 March, the Bosnia and Herzegovina Presidency adopted a decision calling for revised criteria in the country's licensing regime for export of weapons and ammunition following (unconfirmed) suspicions of arms exports to questionable recipients. This in effect halted all exports of weapons and ammunition from Bosnia and Herzegovina.

[31] The addendum requires the Ministry of Foreign Trade and Economic Relations to request the Intelligence-Security Agency to conduct security checks of involved parties prior to an export approval. The Council of Ministers also requested closer cooperation between the institutions participating in the procedures of foreign trade of weapons and military equipment as well as appealing for appropriate training of relevant civil servants and industry employees.

difficult without conflicting with the State law and State-level institutions assigned to oversee its implementation.

74. On 25 August and 14 September, the Bosnia and Herzegovina House of Representatives and the Bosnia and Herzegovina House of Peoples respectively adopted the Annual 2011 Intelligence-Security Policy Platform. The Policy Platform is a set of guidelines that are required for the effective planning, execution and delivery of the legally prescribed tasks of the Intelligence-Security Agency. This was the first such document to have successfully passed both the executive and legislative branches since the Agency's establishment in 2004.

XII. European Union military force

75. The European Union military force (EUFOR) continued to assist the Office of the High Representative and other international organizations to fulfil their respective mandates. Preparations are under way to continue the executive presence of EUFOR beyond 2011. I consider it important for a United Nations-mandated executive military presence to be retained.

XIII. European Union Police Mission

76. The European Union Police Mission has continued to support the development of law-enforcement agencies in Bosnia and Herzegovina in the fight against organized crime and corruption. The Mission has continued work on harmonizing the legal framework for police and supported further implementation of the police reform laws of April 2008, through its mentoring of the Directorate for Police Coordination. The current mandate of the Mission expires on 31 December 2011. European Union member States have carried out a review on the future of the Mission and will decide late in 2011 how the European Union can best continue to support the law enforcement and criminal justice sectors in Bosnia and Herzegovina.

XIV. European Union Special Representative

77. From 1 May to 31 August, in my role as European Union Special Representative, I continued to coordinate the various European Union missions on the ground. In line with my mandate as European Union Special Representative, I have offered local political guidance to EUFOR and the Police Mission. Cooperation with the European Union delegation and member States has also been intense. I handed over my mandate as European Union Special Representative on 1 September to Peter Sørensen, the new head of the European Union delegation and the new European Union Special Representative.

XV. Future of the Office of the High Representative

78. The Peace Implementation Council Steering Board met at the level of political directors on 6 and 7 July. It once again expressed its concern over the political situation in the country, the failure to appoint a State government, as well as the

ongoing failure to address the remaining objectives and conditions for the closure of the Office of the High Representative. The next meeting is tentatively scheduled for 12 and 13 December.

79. Owing to the decoupling of the position of European Union Special Representative from the Office of the High Representative, 26 highly valuable staff members have transferred to the office of the European Union Special Representative. In addition to this, the overall budget of the Office of the High Representative has been reduced for the current budget year, the ninth such reduction in the past 10 years.

XVI. Reporting schedule

80. In keeping with the proposals of my predecessor to submit regular reports for onward transmission to the Security Council, as required by Security Council resolution 1031 (1995), I herewith present my sixth regular report. Should the Secretary-General or any Security Council member require information at any other time, I would be pleased to provide an additional written update. The next regular report to the Secretary-General is scheduled for May 2012.

United Nations S/2011/683

Security Council

Distr.: General
10 June 2011

Original: English

Report of the Secretary-General concerning the credentials of the alternate representative of the United Kingdom of Great Britain and Northern Ireland on the Security Council

Pursuant to rule 15 of the provisional rules of procedure of the Security Council, the Secretary-General wishes to report that he has received a letter dated 10 June 2011 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations stating that Mr. Eric Penton-Voak has been appointed alternate representative of the United Kingdom on the Security Council.

In the opinion of the Secretary-General, this letter constitutes adequate provisional credentials.

11-58242 (E) 041111

Please recycle

United Nations S/2011/684

Security Council

Distr.: General
8 July 2011

Original: English

Report of the Secretary-General concerning the credentials of the alternate representative of the United Kingdom of Great Britain and Northern Ireland on the Security Council

Pursuant to rule 15 of the provisional rules of procedure of the Security Council, the Secretary-General wishes to report that he has received a letter dated 8 July 2011 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations stating that Mr. Michael Tatham has been appointed alternate representative of the United Kingdom on the Security Council.

In the opinion of the Secretary-General, this letter constitutes adequate provisional credentials.

11-58472 (E) 091111

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United Nations S/2011/685

Security Council

Distr.: General
6 October 2011

Original: English

Report of the Secretary-General concerning the credentials of the alternate representative of Brazil on the Security Council

Pursuant to rule 15 of the provisional rules of procedure of the Security Council, the Secretary-General wishes to report that he has received a letter dated 6 October 2011 from the Permanent Representative of Brazil to the United Nations stating that Mr. Gustavo Sénéchal de Goffredo Jr. has been appointed alternate representative of Brazil on the Security Council.

In the opinion of the Secretary-General, this letter constitutes adequate provisional credentials.

11-58480 (E) 091111

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United Nations S/2011/686

Security Council

Distr.: General
8 November 2011

Original: English

Report of the Secretary-General concerning the credentials of the alternate representative of the United States of America on the Security Council

Pursuant to rule 15 of the provisional rules of procedure of the Security Council, the Secretary-General wishes to report that he has received a letter dated 8 November 2011 from the Permanent Representative of the United States of America to the United Nations stating that Ms. Tressa Rae Finerty has been appointed alternate representative of the United States of America on the Security Council.

In the opinion of the Secretary-General, this letter constitutes adequate provisional credentials.

11-58486 (E) 091111

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United Nations S/2011/687

Security Council

Distr.: General
27 October 2011

Original: English

Report of the Secretary-General concerning the credentials of the alternate representative of Germany on the Security Council

Pursuant to rule 15 of the provisional rules of procedure of the Security Council, the Secretary-General wishes to report that he has received a letter dated 27 October 2011 from the Permanent Representative of Germany to the United Nations stating that Ms. Juliane Constanze Baumann has been appointed alternate representative of Germany on the Security Council.

In the opinion of the Secretary-General, that letter constitutes adequate provisional credentials.

11-58315 (E) 081111

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